

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.2978 OF 2021
IN
CRIMINAL APPEAL NO.165 OF 2019

Vijay Laxman Kamble

Applicant

versus

The State of Maharashtra and another

Respondents

Mr.Anand G. Awasarmol, Advocate for applicant.

Mr.Arfan Sait, APP, for State.

Mr.Sushan Mhatre, APP, for State.

Mr.Prabodhan Yejare, API, Nerul Police Station, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 11th February 2022

PC :

1. This is second application for suspension of sentence and grant of bail pending Criminal Appeal No.165 of 2019. The previous application for similar prayer was rejected by this Court by order dated 26th February 2019.

2. The applicant is convicted for offences under Sections 376(2) (i) and 452 of Indian Penal Code and under Sections 4 and 8 of Protection of Children from Sexual Offences Act, 2012. The highest sentence imposed for the conviction is imprisonment for ten years.

3. Learned advocate for the applicant submitted that this application has been preferred on the ground that applicant-appellant has been in custody for a period about five years and five months. The maximum sentence imposed by the Trial Court while

convicting the applicant is for a period of ten years. The applicant has completed more than 50% sentence period imposed by the Trial Court. Reliance is placed on the decision of Supreme Court in the case of **Saudan Singh Vs. State of Uttar Pradesh** delivered in Special Leave to Appeal (Criminal) No.4633 of 2021, dated 5th October 2021. It is submitted that the Supreme Court has observed that there may be convicts in custody in cases other than life sentence cases and in those cases again the said parameter of 50 per cent of the actual sentence undergone can be the basis for grant of bail.

4. Learned APP submitted that previous application preferred by the applicant has been rejected by this Court on merits. The applicant has been convicted for serious offence. The victim was eight years of age at the time of crime. The Supreme Court has left discretion to the Court. The appeal can be directed to be heard expeditiously.

5. Learned counsel for respondent no.2 adopted the submissions of learned APP and submitted that seriousness of the offence may be considered and at the most the appeal may be directed to be listed for hearing.

6. It is noted that previous application preferred by the applicant was rejected on merits. The crime relates to penetrative sexual assault inflicted on the victim girl aged about eight years. The applicant is in custody for about five years and five months. However, considering the factual aspects of the matter, the prayer for suspension of sentence and grant of bail cannot be granted. However, hearing of the appeal can be expedited. It is brought to my notice

that paper book is ready and in view of the fact that applicant is in custody for more than five years and five months, the appeal can be listed for hearing on board from the week commencing from 21st March 2022.

7. Criminal Application No.2978 of 2021 is rejected and disposed of. Criminal Appeal No.165 of 2019 be listed for for hearing on weekly board in the week commencing from 21st March 2022. The registry shall provide copy of appeal paper book to advocate for respondent no.2.

(PRAKASH D. NAIK, J.)

MST