

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1988 OF 2018
WITH
CRIMINAL APPLICATION NO.1987 OF 2018
IN
CRIMINAL APPEAL NO.1476 OF 2018
WITH
WRIT PETITION NO.5131 OF 2018

Rahul Baban Farade

Applicant

versus

The State of Maharashtra and another

Respondents

Mr.Shailesh Kharat, Advocate for appellant in Appeal No.1476/2018.
Mr.Ajinkya Udane, Advocate for respondent no.2.
Mr.S.R.Agarkar, APP, for State.
Mr.Akkshay H. Kumar i/by Mr.abhishek Anchact for petitioner in Writ
Petition.

CORAM : PRAKASH D. NAIK, J.

DATE : 25th July 2022

PC :

1. These are the applications for suspension of sentence and grant of bail during pendency of Criminal Appeal No.1476 of 2018. In view of administrative order, this appeal has been listed before this Court.

2. The applicant-appellant has been convicted for the offence u/s.5(n)(m) punishable u/s.6 of Protection of Children from Sexual Offences Act, 2012 ('POCSO Act') and sentenced to suffer imprisonment of 10 years. He is also convicted for the offence u/s.3 r/w 4 of POCSO Act, Section 7 r/w 8 of POCSO Act, Section 11 r/w 12 of POCSO Act and Section 376(1), 376(2)(i)(f), 354A of IPC. All

the sentences were directed to run concurrently. The maximum sentence of imprisonment imposed by Trial Court was for a period of ten years. Other sentences imposed under POCSO Act are lesser than ten years. No separate separate sentence is directed for offence u/s.376(1), 376(2)(i)(f), 354A of IPC.

3. Learned advocate for applicant submits that applicant was arrested on 4th May 2017. He is in custody for 5 years and 2 months. Initially offences were registered u/s.354A of IPC and Section 12 of POCSO Act. During the course of investigation the Investigating Officer had recorded statement of victim u/s.164 of Cr.P.C. The said statement does not refer to penetrative sexual assault. However, in the evidence, the victim had referred to the alleged act of fingering the private part, which amount to penetrative sexual assault. There is improvement in her evidence. If the case is proved, the appellant at the most could have been punished for the offense u/s.354 IPC and sexual assault. There is no independent evidence. The victim had referred to the fact that she met a lady after the incident. The said lady was not summoned but appeared before the Court and gave her evidence.

4. Learned APP submitted that applicant has been convicted for the offences under POCSO Act and IPC. The omissions appearing in the version of victim were not proved. The substantive evidence before the Court will have to be considered. The Trial Court had directed action against Investigating Officer and Medical Officer.

5. Learned advocate for respondent no.2 victim submitted that there was inaction on the part of Investigating Officer and Medical

Officer. There has been delay in recording the FIR. The victim was not medically examined. Considering the lapses on the part of Investigating Officer and Medical Officer, the Trial Court had directed action to be taken against them. There is sufficient evidence on record to show that victim was subjected to penetrative sexual assault.

6. The FIR was registered alleging molestation and sexual assault. The statement of victim was recorded u/s.161 and 164 of Cr.P.C. Apparently the statement did not refer to penetrative sexual assault. Prosecution has urged that omissions were not put to Investigating Officer. Victim was not confronted with previous statement. Prosecution has urged that there was lapses on the part of Investigating Officer and Medical Officer. However, the fact remains that there was no medical examination of victim and there was no medical report to support prosecution case. Issue relating to lapses in the investigation and inaction will have to be considered while adjudicating appeal. The applicant is in custody for a period of 5 years and 2 months.

7. Considering the nature of evidence and factual matrix of the matter, case for suspension of sentence and grant of bail is made out. Hence, I pass following order :

ORDER

- (i) Interim Application No.1988 of 2018 and Interim Application No.1987 of 2018 are allowed and disposed of;
- (ii) The sentence of imprisonment imposed vide judgment and order dated 29th October 2018 passed by Additional Sessions Judge, Solapur in Sessions Case No.164 of 2007 is suspended and applicant

is directed to be released on bail on executing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

(iii) The applicant is permitted to furnish cash bail in the sum of Rs.25,000/- for a period of six weeks in lieu of surety;

(iv) The applicant shall not enter the jurisdiction of Tembhurni Police Station, Taluka Madha, District Solapur where the victim resides, till final disposal of this appeal;

(v) The applicant shall attend Trial Court once in six months on First Saturday of the month till disposal of the Criminal Appeal;

(vi) In the event there are two consecutive defaults in attending the Trial Court, the Trial Court shall submit report to this Court;

(vii) In the event of default committed by the applicant in attending the Trial Court, the prosecution will be at liberty to prefer application for cancellation of bail.

(PRAKASH D. NAIK, J.)

MST