

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.432 OF 2019
IN
CRIMINAL APPEAL NO.1301 OF 2019

Tulshiram Gopal Manere	Applicant
versus	
The State of Maharashtra and others	Respondents

Ms.Vriddhi Maria i/by Mr.S.R.Phanse, Advocate for applicant.
Mr.Ajay Patil, APP, for State.
Mr.Swapnil Ovalekar, Advocate for respondent nos.2 to 4.

CORAM : PRAKASH D. NAIK, J.

DATE : 22nd March 2022

PC :

1. This is an application for suspension of sentence and grant of bail during pendency of Criminal Appeal No.1301 of 2019.

2. The applicant is convicted vide judgment and order dated 9th August 2019 passed by Additional Sessions Judge and Special Judge (POCSO Act), Thane in Special Case No.83 of 2017 for the offence u/s.376(n) of Indian Penal code and sentenced to suffer imprisonment for 10 years. He is also convicted for the offence u/s.6 r/w 5(1) & (m) of Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and sentenced to suffer rigorous imprisonment for 10 years. The appellant is further convicted for offence u/s.10 read with Section 9(1)&(m) of POCSO Act, Sections 323 and 354 of IPC. He has been sentenced to suffer rigorous imprisonment for 5 years and 1 year on each count.

3. The case of the prosecution is that victim girls were students in school. The accused was driving the school bus. The victims were using the bus for attending school and returning home. The complainant is the teacher in school. She noticed that victim no.2 did not attend the school on 17th December 2016. The complainant then made inquiry with the victims. Victim no.2 disclosed that accused has been committed bad acts with her and other victims. The victims had disclosed that accused used to remove clothes of the victims and commit acts amounting to sexual assault. The victim no.2 had stated that accused had physical relations with her. The FIR was registered. Statements of witnesses were registered. On completing investigation charge sheet was filed.

4. Learned advocate for applicant submitted that the applicant-accused has been falsely implicated in this case. Evidence suffers from omissions. There has been delay in lodging the FIR. The families of victims did not notice anything unusual with the victims. There is no independent witness. The evidence of victims is contradictory. The medical officer did not notice any abnormality. There was no injuries on the body of victims. The watchman in the school did not notice anything objectionable. The victims were tortured. The applicant is in custody for more than five years.

5. Learned APP submitted that offences are of serious nature. Accused is involved in victimizing the minor girls. The victims were two schools students. There is no reason to doubt the versions of victims. The evidence of victims attributes specific overt act to the applicant. The victims were aged about 8 to 9 years. The accused

was driver of the school bus. The victims were in custody of accused. He has committed breach of trust by subjecting the victims to sexual assault.

6. Learned counsel for respondent no.2 supported the submissions of learned APP. It is submitted that victims were small children. The defence of accused is not probable. There is sufficient evidence to convict the accused for the offences. Minor discrepancies in the evidence could not be fatal to the prosecution case.

7. Undisputedly the accused was the driver of school bus. The victims were students of school. The complainant has noticed unusual behaviour of victims and made inquiries with them. The victims had disclosed acts committed by the accused. Although there are some omissions in the evidence of witnesses, primary evidence attributing role of sexual assault is apparent from the depositions of witnesses. There are two victims in this case. Both were aged about 8 to 9 years. They were students of school. They were travelling from bus driven by applicant. The prosecution has examined complainant as PW-1 and victims as PW-2 and PW-3. PW-4 is the medical officer. PW-7 is also medical officer. Taking into consideration evidence of victims and other circumstances on record, at this stage, it is difficult to disbelieve the versions of witnesses.

8. Considering the aforesaid circumstances, no case is made out for suspending sentence and grant of bail. However, considering the fact that applicant is in custody for more than five years, hearing of the appeal can be expedited. Hence, I pass following order :

ORDER

- (i) Interim Application No.432 of 2019 is rejected;
- (ii) Hearing of Criminal Appeal No.1301 of 2019 is expedited.

(PRAKASH D. NAIK, J.)

MST