

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.1315 OF 2019
IN
CRIMINAL APPEAL NO.1590 OF 2019

Arjun Ramsamuz Gupta

Applicant

versus

The State of Maharashtra and another

Respondents

Mr.Aakash Topiwala i/by Mrs.Anjali Patil, Advocate for applicant.

Mr.Arfan Sait, APP, for State.

Mr.Prasad Kulkarni, Advocate for respondent no.2.

CORAM : PRAKASH D. NAIK, J.

DATE : 16th March 2022

PC :

1. This is an application for suspension of sentence and grant of bail pending Criminal Appeal No.1590 of 2019. The applicant has been convicted for offence under Section 8 of Protection of Children from Sexual Offences Act, 2012 ('POCSO Act') and sentenced to suffer imprisonment of three years and pay fine of Rs.10,000/-.

2. The case of prosecution is that the accused held the hand of victim and told her to accompany him or else he would throw acid upon her. The victim managed to release her hand and ran away from the place of incident.

3. The applicant was tried for the offence u/s.354A and 506 of Indian Penal Code r/2 Section 12 of POCSO Act. However, he was convicted for the offense u/s.8 of POCSO Act.

4. The applicant was on bail during trial. The sentence of imprisonment was suspended by Trial Court on the date of conviction. Subsequently this Court by order dated 9th December 2019 released the applicant on bail by way of interim relief. The said order is in operation since then.

5. Learned counsel for applicant submitted that facility of bail has not been misused by the applicant. There is no evidence to convict applicant for the offence u/s.8 of POCSO Act. There was no sexual intent in holding the hand of victim

6. Learned APP submitted that sexual intent was implicit from the version of victim. The accused had also threatened the victim that if she does not accompany him, he would throw acid on her.

7. Learned advocate for respondent no.2 also made similar submissions. He further submitted that there is sufficient evidence to convict applicant for the offence u/s.8 of POCSO Act. There was no effective cross-examination by giving appropriate submissions to disbelieve the case of victim.

8. The alleged incident had occurred on 21st August 2015. The applicant was on bail during trial. The Trial Court has acquitted the applicant for the offence u/s.354A and 506 of IPC. In paragraph 31 of the impugned judgment it is observed that prosecution has failed to prove the repeated instances of stalking. It was also observed that offences u/s.354A and 506 of IPC are not made out. It was further observed that holding the hand by accused is not such physical contact and advances involving unwelcome and explicit sexual

overtures, as defined u/s354A of IPC. Hence offence u/s.354A is not proved. However, applicant has been convicted u/s.8 of POCSO Act. On the date of conviction applicant has been granted bail by the Trial Court. The said order was continued by this Court on 9th December 2019. Since then interim order passed by this Court is in operation.

9. Considering the aforesaid factual aspects, interim order passed by this Court can be confirmed. Hence, I pass following order :

ORDER

- (i) Interim Application is allowed and disposed of;
- (ii) The order dated 9th December 2019 is confirmed;
- (iii) The sentence of imprisonment dated 15th November 2019 passed by the Designated Judge under POCSO for Greater Bombay in POCSO Special Case No.155 of 2016 is suspended pending Criminal Appeal No.1590 of 2019
- (iv) The applicant is directed to be released on bail on executing PR bond in the sum of Rs.15,000/- with one or more sureties in the like amount;
- (v) The applicant shall not approach the victim and harass the victim in any manner;
- (vi) The applicant shall attend Trial Court once in six months on First Saturday of the month till disposal of the Criminal Appeal;
- (vii) In the event there are two consecutive defaults in attending the Trial Court, the Trial Court shall submit report to this Court;
- (viii) 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.)