

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1473 OF 2023
IN APEAL/367/2023

ANIL @ NANDU S/O. SHESHRAO SHELAR
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants : Mr. M. S. Shaikh
APP for Respondent No. 1: Mr. G. O. Watamwar
Advocate for Respondent No. 2: Mr. G. R. Ingole

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CORAM : R.M. JOSHI, J

DATE : JULY 06, 2023

PER COURT :

1. Mr. G. R. Ingole states that he has instructions to appear on behalf of Respondent no. 2. He files 'Vakalatnama'. The same is taken on record.

2. This application is filed under Section 389 of Cr.P.C for suspension of substantive sentence and for enlargement of bail by the convict for the offences punishable under Sections 342, 376, 506 read with Section 34 of the IPC and Sections 4 and 8 of the Protection of Children from Sexual Offences Act (for short 'POCSO Act').

3. Amongst other sentences, Appellant is convicted and sentenced to suffer RI of 20 years for the offences punishable under Sections 4(22) of POCSO

Act.

4. Learned Counsel for the Appellant states that as per victim's own statement she was allegedly confined by the accused on 27.03.2019 and that after she went to her parents, she reported about the same to them. Thus, according to him, it is not possible to digest that parents did nothing if their daughter was away from home for 7 days or so. Attention of the Court is drawn to the evidence of father of victim, who has stated that prior to this complaint his daughter lodged two complaints of such nature against two persons. It is pointed out that further cross-examination indicates possible reason for which present complaint could have been lodged. It is submitted that the Appellant has good case on merits and therefore, he be enlarged on bail.

5. Learned APP opposed the said application by contending that offence is serious in nature and has been committed against minor girl. It is also pointed out that there is evidence in order to show the involvement of the Appellant in this crime i.e., bed-sheet recovered from the spot of the incident and inner

wear of the accused which show that there are stains of semen on both clothes matching to each other. This evidence coupled with statement of victim according to him is sufficient to connect Applicant with this crime.

6. Learned Counsel for the victim vehemently argued that the victim was minor and therefore, the offence committed against her is under provisions of PCSO Act and also is serious in nature. He submitted that since the Appellant was under trial prisoner and that he is handed over with 20 years imprisonment, he is not entitled for bail.

7. During the course of arguments, it was revealed that though the girl was away from home for 7 odd days but even missing report is not lodged by parents. Though, it is claimed that father of the victim had been to the police station but his complaint was not recorded but this is hardly believable. This fact becomes relevant in view of cross-examination of father of victim. He has candidly admitted therein that victim had lodged two complaints of such nature against two other persons. Though, in the further cross-examination suggestion made to him about victim are

denied, however, the said admission of father cannot be ignored.

8. It is pertinent to note that *prima facie* except for statement of the victim there is no other material on record to support the case of prosecution. This Court is conscious of the fact that in appropriate case solitary statement of victim can become basis of the conviction. Here in this case, however, in view of above evidence on record it needs to be seen as to whether her statement gets support from the material on record.

9. There is nothing on record to show that forensic examination of clothes of victim in any way supports her contention about rape. Learned trial Court has convicted accused on the basis of semen found on underwear of Appellant as well as bed sheet found at the spot. This cannot become evidence to conclude that there was rape committed on the victim. The learned trial Court relying upon the medical opinion has held that there is no evidence of forcible sexual intercourse however, the sexual intercourse with victim is not ruled out. The allegation of victim of committing forcible sexual intercourse against her is

not supported by material evidence on record. This evidence may be required to be considered at the time of hearing of appeal, taking into consideration the admission of father given in his cross-examination and other witnesses appearing from evidence on record.

10. Having regard to the aforesaid facts and *prima facie* consideration of material evidence on record, it is fit case wherein Appellant deserves to be enlarged on bail by suspending substantive sentence imposed against him. Hence, the order:

O R D E R

- (i) Application is allowed.
- (ii) The substantive sentence imposed by the learned Special Judge (POCSO), Aurangabad in Special Case (POCSO) No. 81/2019 on 12th December, 2022, is suspended pending appeal.
- (iii) Applicant be released on bail on executing PR bond of Rs. 15,000 (Rupees Fifteen Thousand Only) with one solvent surety in the like amount.
- (iv) Applicant is directed not to enter jurisdiction of concerned police station initially for the period of one year.
- (v) Bail before trial Court.

(R.M. JOSHI, J.)