

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2700 OF 2022
IN
CRIMINAL APPEAL NO. 397 OF 2020

Pawan S/o Pramod Kulkarni
Age : 29 Years, Occu. : Nil
R/o. N-11, B Sector, 5/4,
Subhash Chandra Bose Nagar
Hudco, Aurangabad

... Applicant/Appellant.

Versus

1. The State of Maharashtra
2. XYZ

... Respondents.

...

Mr. Abhishek Kulkarni, Advocate for Applicant/Appellant.

Mrs. P. V. Diggikar, APP for Respondent No.1 – State.

Ms. Sharda Chate, Advocate for Respondent No.2 (Appointed)

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CORAM : SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.

RESERVED ON : 06th JANUARY 2023.

PRONOUNCED ON : 18th JANUARY 2023.

ORDER (PER ABHAY S. WAGHWASE, J.) :

1. Applicant who is convicted by learned Special Judge, Aurangabad in Special Case (POCSO) No.164 of 2017, for commission of offences under sections 376(2)(n), 363 and 506 of Indian Penal Code (IPC) and under section 5(I) punishable under section 6 of the Protection of Children from Sexual

Offences Act, 2012 (POCSO Act) registered with CIDCO Police Station, Aurangabad City, is seeking suspension of sentence as well as grant of bail.

2. Taking us through the charge-sheet, learned counsel for applicant would submit that complaint came to be lodged by informant alleging that, she is studying in 7th Standard. It is narrated that the applicant was her neighbour. That, on 12.08.2017, it is alleged that while she was alone as her parents were out of station, applicant called her on the pretext of some work and took her on the terrace of his house and had sexually ravished her. She was threatened to be killed if at all she discloses it to anyone and therefore, when she returned, she did not inform her uncle. However, when parents returned, she narrated the incident to them and therefore they took her to the police station where she lodged complaint, on the strength of which police registered crime bearing No.0522 of 2017 for commission of above offence.

3. It is submitted that applicant is falsely involved. Complaint is belated. That, it is doubtful whether informant is minor as manufactured and fabricated birth certificates are subsequently tendered. That, apparently FIR is registered after two days of alleged offence and as such there is delay, but the same is not explained.

4. It is pointed out that learned trial Judge has appreciated only the case of prosecution and has not considered grounds raised by the accused in

trial and therefore, appeal has been preferred against the said judgment and order of conviction. According to learned counsel, the appeal will take its own time and turn and as such applicant would be languished in jail till then. In above backdrop, it is prayed that the sentence awarded be suspended and the applicant be set at liberty by imposing suitable conditions.

5. While opposing the bail application, learned APP point out that serious offence under the provisions of POCSO Act has been committed. That, the girl was merely completed 13 years of age. Accused had taken disadvantage of acquaintance, initially as a neighbour and subsequently disadvantage of her loneliness while her parents were out of the house. Therefore, by threatening her she was sexually exploited on various occasions. Therefore, learned trial Judge, after appreciating the entire oral and documentary evidence and finding it supporting the case of prosecution, has recorded guilt. Therefore, if instant prayers are granted, wrong message will go to the society and as applicant does not deserve relief as prayed, it is prayed that the application be rejected.

6. We have heard both sides to their satisfaction.

7. We have perused the record and papers and evidence adduced by both the sides during trial. From the FIR, it is emerging that at the time of the incident victim was studying in 7th standard, whereas, accused was over 30

years of age. It seems that victim and accused were initially the neighbours and as such well acquainted. According to informant, a week prior to the incident, accused had come to her house requesting her to tie 'rakhi' and thereafter also he used to call her on some or the other pretext. It seems that accused changed his residence and shifted to another place, but still he used to go to visit her. As regards sexual exploitation is concerned, it seems that it is stated in the FIR that on 12.08.2017, her parents had gone to their native place at Buldhana and she was alone in the house, i.e. on the first floor, whereas, her paternal uncle and aunt resided on the ground floor. It is her case that, around 10.30 p.m. while she was sitting on platform(ओटा) outside the house, at that time accused came and called her. She claims to have questioned him as to why he is calling her and she allegedly said that his mother has called her. Therefore she accompanied him. She further states that, she was taken to the terrace, forcible striped by issuing threats and forcibly raped. It is alleged that he threatened her not to disclose it to anyone and thereafter, she came home. It is emerging from the statement of mother that finding her crying and disorganized, her uncle contacted her parents and as such, they immediately reached in the night. Thereafter, the girl narrated as to what happened with her. She also disclosed that previously also she was ravished by accused. It seems that, thereafter finally parents mustered up the courage and approached the police and set law into motion.

8. As regards to age of the girl is concerned, birth certificate is placed on record. It is revealed that date of birth of girl is 31.07.2004. Therefore, apparently on the date of occurrence which took place on 12.08.2017, her age was 13 years. She is reported to be student of 7th standard. This is not refuted by applicant. In the statement under section 313 of Cr.PC., there is outright denial or answer as “not known”.

9. After hearing both sides and on appreciating the oral and documentary evidence, more particularly that of the victim girl, learned trial Judge has found it credible and accepted the same and has thereby recorded the guilt of accused. Accused was not on bail during trial. Taking into account the gravity of offence, we do not considered it to be a fit case to grant relief as prayed and hence the application is rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)