

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

906 CRIMINAL APPLICATION NO.4037 OF 2022
IN
CRIMINAL APPEAL NO.544 OF 2023

HARISH RANGNATH DESAI

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. S.A. Ambilwade, Advocate for applicant

Mr. S.D. Ghayal, APP for respondent No.1

Mr. R.B. Gite, Advocate for respondent No.2

Mr. Kedar Warad, Advocate (appointed) for respondent No.2

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

DATE : 21st SEPTEMBER, 2023

ORDER :

1 Present application has been filed for suspending the substantive sentence imposed on the applicant/appellant in Special Case No.145/2017 by learned Special Judge, under POCSO Act, Kopargaon, Dist. Ahmednagar on 20.10.2018 and releasing the applicant on bail.

2 Heard learned Advocate Mr. S.A. Ambilwade for the applicant,

learned APP Mr. S.D. Ghayal for respondent No.1 and learned Advocate Mr. R.B. Gite as well as learned appointed Advocate Mr. Kedar Warad for respondent No.2 and perused the documents on record.

3 It has been vehemently submitted on behalf of the appellant that the learned trial Judge has not appreciated the evidence properly. The learned trial Judge failed to consider that PW 1 - wife of the applicant, and PW 2 - victim, their daughter, have not deposed in consistent manner. There was quarrel between the husband and wife, but the girl has been used as a weapon by the wife of the applicant. Mother of the accused used to reside with them, but she has not been examined. There is inordinate delay in lodging the First Information Report. There was no disclosure by the girl to her grandmother (mother of the applicant). She had not even disclosed about the alleged acts by the applicant to her teacher or friend. If any, such incidents would have happened, then her behaviour would have been different. The appeal is admitted. The accused is ready to abide by the terms of the bail. He need not be kept behind the bars.

4 Per contra, the learned APP supported the reasons given by the learned trial Judge and stated that the applicant/appellant has committed one of the heinous crimes and, therefore, sympathy need not be shown.

5 At the outset, we would like to say that the factors for consideration at this stage are different and we are not supposed to discuss the evidence in detail. Here, the testimony of PW 1 – mother of the victim and PW 2 victim is consistent. In the First Information Report itself the informant has stated about the dispute between herself and the accused. According to her, her husband i.e. present applicant used to drink liquor daily and used to assault her. She used to go to her parents house and thereupon after she was persuaded by her parents, she used to resume the cohabitation. At this stage, we do not want to make any comment on the ground of dispute between the husband and wife. The daughter would be used as a tool. Definitely, it requires appreciation of evidence, but the consistency in the evidence at this prima facie stage and the fact that the accused was never released on bail during the trial are the points which we are considering and on the basis of those points we do not find this to be a fit case where the sentence needs to be suspended. Application stands rejected.

(ABHAY S. WAGHWASE, J.)

(SMT. VIBHA KANKANWADI, J.)