

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.2269 OF 2023
in
CRIMINAL APPEAL NO.714 OF 2023

Vinayak Ashok Patil	]	..	Applicant
vs.			
State of Maharashtra & Anr.	]	..	Respondent

Mr.Anand S. Patil for the Applicant.

Mr.S.R. Agarkar, APP for the State.

Ms.Megha Bajoria, appointed Advocate for Respondent no.2.

CORAM : BHARATI DANGRE, J

DATE : 8th September, 2023.

P.C.

1] The victim girl stepped into the witness box to support the case of the prosecution against the accused for proving the commission of offence under section 354 of the IPC and Section 12 of the POCSO Act.

It is her version is that, while she was studying in 6th standard and was enroute to her school, she missed the bus, and the accused who passed from the bus stop, offered her to be dropped at the school. She pillion rided with him. But when he started taking the motorcycle towards the agricultural farm, she questioned him and he responded by saying that he want to meet his friend.

The victim narrate that, it was an agricultural field and she was asked to alight from the vehicle and thereafter the accused attempted to take her to the field by holding her hand and she raised a cry for help.

One Gaikwad Uncle came to the spot and a scuffle took place between him and the accused and she was asked to leave. When she came on the road, she noticed Chandrakant uncle who was driving a tractor and at that time even the accused followed her and some talk ensued between the two and she was dropped at home, by this man.

2] This resulted in registration of the subject CR against the present Applicant and on being tried he is convicted under Section 354 of the IPC and he was sentenced to suffer SI for one year and fine of Rs.5000/- i.d. to suffer SI for two months. On being convicted under section 12 of the POCSO Act he is sentenced to suffer SI for one year and fine of Rs.5000/-.

The sentences are directed to run concurrently.

3] The Appeal is admitted and by the present Interim Application, the Applicant seek suspension of sentence and his release on bail, pending the Appeal.

On perusal of the Judgment, it is noticed that one of the person who had witnessed the incident as per the victim girl, could not depose, as he was no more alive, whereas Appaso Gaikwad (PW5) did not support the case of the prosecution.

The version of the victim is that the Applicant attempted to pull her towards the field and it will have to be discerned, whether this would entail conviction under Section 354 IPC read with 12 of the POCSO Act.

4] Since the Appeal is admitted for final hearing, considering the fixed term of sentence imposed, in the wake of decision of the Apex Court in the case of **Bhagwan Rama Shinde Gosai vs. State of Gujarat, (1999) 4 SCC 421**, Application deserve to be allowed. Hence, the order :

- a] The sentence imposed upon the Applicant in Special Case No.3/2016 stands suspended.
- b] The Applicant is directed to be released on bail subject to the same terms and conditions imposed by the Special Court, on furnishing fresh bond.
- c] The Applicant shall keep the Investigating Officer updated about his address and change, if any.

[BHARATI DANGRE, J]