

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.1202 OF 2023
IN
CRIMINAL APPEAL NO.435 OF 2023

Ashwin Gajanan Tarpe	]	Applicant
Vs.		
State of Maharashtra and another	]	Respondents

Mr. Viresh Purwant, for Applicant.

Mr. A.R. Kapadnis, A.P.P, for Respondent No.1-State.

Ms. Meghna Gowalani, Appointed Advocate for Respondent No.2.

Mr. Nagesh Pisal, P.S.I, Kasarvadavali Police Station, Thane City.

CORAM : PRITHVIRAJ K. CHAVAN, J.

DATE : 2nd August, 2023.

ORDER:

1. This is an application under section 389 of the Code of Criminal Procedure, 1973 (for short “Cr. P.C”) seeking suspension of execution of sentence pending the appeal.
2. Heard learned Counsel for the applicant, learned A.P.P, for respondent No.1-State and learned Counsel for respondent No.2.
3. The applicant has been convicted by the Special Court under POCSO Act, Thane of the offence punishable under section 376 (2)

(n) of the Indian Penal Code (for short “I.P.C”) and section 5 (j) (ii) (i) punishable under section 6 of the Protection of the Children from Sexual Offences Act, 2012 (for short “POCSO Act”).

4. Facts in brief are as under.

5. Admittedly, the victim was 17 years old at the time of the incident which alleged to have occurred in the year 2013. The victim was residing with her family members at Bramhanand, Thane in a rented house. The applicant was neighbour and, therefore, the victim and the applicant got acquainted with one another. The applicant took disadvantage of his acquaintance with the victim and some time in the month of March at about 11.00 a.m when parents of the victim were out for work and she was alone in the house, he forcibly entered in the house and on the point of knife subjected the victim to penetrative sexual assault. He also threatened the victim not to disclose the incident to anyone, otherwise he would defame her. The victim, due to fear of defamation and loss of honour of parents did not disclose the incident to anyone. The applicant thereafter continued in his act of penetrative sexual assault repeatedly against the wish of the victim. It is alleged that the

applicant subjected the victim to rape on three to four occasions, as a result, she was impregnated. Victim's mother noticed the said fact. Thereafter, the victim disclosed the facts to her mother about the incident.

6. A report came to be lodged with Kasarwadawali Police Station, Thane. The applicant was arrested. Investigation was conducted and a charge-sheet came to be filed. Prosecution examined eight witnesses in support of its case. Whereas, applicant has examined two defence witnesses. Learned Special Judge, under the POCSO Act, after going through the evidence of prosecution witnesses and the defence, convicted and sentenced the applicant as above.

7. At the outset, learned Counsel for the applicant seeks release of the applicant on bail by suspending execution of sentence only on the ground that he had undergone six years of imprisonment out of total 10 years imprisonment awarded by the trial Court. He, *inter alia*, submits that there was a love affair between the victim and the applicant.

8. On the other hand, learned A.P.P has invited my attention to the testimony of P.W.7(victim) who has categorically testified as to how the applicant had forcibly committed penetrative sexual assault in the absence of her parents on the point of knife. Evidence also reveals that whenever such acts were committed by the applicant, the same were after giving threats to the victim not to disclose the incident to anyone or he would defame her.

9. It is also pertinent to note that the prosecution has established paternity of the baby child delivered by the victim in the form DNA profile. DNA profile of the baby child matches with the DNA profile of the victim and the applicant. Result of the analysis indicates that the applicant is the biological father of the baby. The D.N.A report as well as the evidence of the victim establish that the applicant has committed offence with which he was charged.

10. Merely because, the applicant had undergone six years of imprisonment out of ten years would not be the sole ground to suspend execution of the sentence looking to the nature and gravity of the offence as well as manner in which it was committed. Had there been a love affair, there would have been no reason for the

applicant to threaten the victim and commit rape on the point of knife and also to extend threats of defamation. These are the *prima facie* observations without going into merits of the case.

11. For the reasons stated hereinabove, I am not inclined to grant the prayer.

12. Application is rejected, however, hearing of the appeal is expedited in view of the fact that the applicant has already undergone six years of imprisonment out of total imprisonment of ten years.

13. Application stands disposed of.

[PRITHVIRAJ K. CHAVAN, J.]