

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.2125 OF 2023
IN
CRIMINAL APPEAL NO.662 OF 2023

Mahesh Raghunath Patil .. Applicant

Versus

The State of Maharashtra .. Respondent

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Mr.Chetan Patil i/b Mr.Mandar G. Bagkar for the Applicant.

Mr.S.R.Agarkar, A.P.P. for the State/Respondent.

Ms.Meghana Gowalani, Appointed Advocate for the Respondent No.2.

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CORAM: BHARATI DANGRE, J.

DATED : 26th SEPTEMBER, 2023

P.C:-

1. By the present Application, the Applicant who stand convicted by the Addl. Sessions Judge, Special Court (POCSO), Kolhapur in POCSO Special Case No.86 of 2018, seeks suspension of sentence imposed on him and also seek his release on bail, since the Appeal filed against his conviction is pending before this Court.

2. On being charged for the offences punishable under Section 354, 354D, 452 of the Indian Penal Code and under

Section 12 of the POCSO Act, he is convicted under Section 8 of the POCSO Act and sentenced to suffer R.I. for three years and to pay fine of Rs.5,000/- in default to suffer R.I. for six months. Separate sentence is awarded to him on being convicted under Sections 354, 354-A and 451 of the IPC, the substantive sentence having been directed to run concurrently.

3. The impugned judgment has appreciated the case of the prosecution, which has surfaced before it through the victim girls.

What is conspicuous in the impugned judgment is that the charge was framed under section 12 and even the learned Judge has found the accused guilty under the said Section, however, while awarding the sentence, he has recorded a conviction under Section 7 i.e. for sexual assault and imposed a punishment under Section 8, which prescribe punishment for sexual assault.

Sexual Assault is defined under Section 7 and the essential ingredient of the said provision being “the sexual intent”. When the evidence of the victim girls is carefully read, the version is that the Accused entered their house and held their hands in two distinct incidents.

As far as PW 2 is concerned, she has deposed that when her mother confronted him about the act, he told that her daughter has taken money, but as far as PW 1 is concerned, her version is that when no one was at home, he came into the house, held her hand and asked her to follow him.

4. The question that arises for consideration is whether the act was done with a sexual intent? Though the learned Judge has concluded in paragraph 32, that any act done with sexual intent, which involve physical contact without penetration, attract Section 7 and the same is punishable under Section 8, the Accused never faced charge under Section 7.

This is the matter which deserve appreciation during the course of hearing of Appeal.

In the wake of above, prima facie case is made out for suspension of sentence and for release of the Applicant on bail, by following order.

: ORDER :

1. The Application is allowed.
2. The sentence imposed by the impugned judgment dated 18/05/2023 in POCSO Special Case No.86 of 2018 is suspended during the pendency of the Appeal.
3. The Applicant shall be released on bail on furnishing P.R.Bond of Rs.25,000/- with one or more sureties in the like amount.

(SMT. BHARATI DANGRE, J.)