



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 2437 OF 2023
IN
CRIMINAL APPEAL NO. 846 OF 2023

Yunus @ Munna Ajij Pathan

...Applicant

Versus

1. The State of Maharashtra

...Respondent

2. ABC

3. XYZ

Mr. Mohansinh U. Rajput for the Applicant.

Mr. V. B. Konde Deshmukh, APP for the State.

CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.

DATE : 22nd AUGUST 2023

P. C. :

1. Heard learned counsel for the parties.
2. By this application, the applicant seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of his aforesaid appeal.

3. The applicant vide judgment and order dated 30th April 2021 passed by the learned Judge, Special Court, Mangaon, District-Raigad in Special Atrocity Case No. 1 of 2018 has been convicted as under :

— for the offence punishable u/s. 376 2(k) & (n) of the Indian Penal Code, to suffer rigorous imprisonment for 14 years and to pay fine of Rs.1,00,000/-, in default, to suffer simple imprisonment for one year.

— for the offence punishable u/s. 506 of the Indian Penal Code, to suffer imprisonment for one year;

— for the offence punishable u/s. 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, to suffer imprisonment for life and to pay fine of Rs.10,000/-, in default, to suffer simple imprisonment for one month.

All the sentences were directed to run concurrently.

4. Perused the papers. According to the prosecution the applicant sexually assaulted the prosecutrix (PW-1) for several years

and that the applicant as an employer had taken undue advantage of PW-1.

5. Learned counsel for the applicant submitted that the applicant although was alleged to have sexually assaulted PW-2 (minor), the applicant has been acquitted of the offence punishable under the POCSO Act, as the prosecution had failed to prove that PW-2 was a minor and on merits.

6. As far as PW-1 the prosecutrix is concerned, learned counsel for the applicant submits that a perusal of the evidence of PW-1, in particular, her cross examination would show that there was a relationship between the applicant and the prosecutrix for about 10 years. He further submits that PW-1 was pregnant thrice; her first pregnancy led to an abortion, as there was danger to PW-1's life. He states that in the second pregnancy, child was born, however, within three months the child expired, and in the third pregnancy a child was born, who has survived.

7. He submitted that the evidence on record will show that relationship between the applicant and PW-1, if any, was consensual

in nature and that PW-1 despite having several opportunities had not disclosed the alleged sexual assault to any person much less her family.

8. He submitted that from the evidence it appears that only when the prosecutrix PW-1 learnt that the applicant was also having relations with PW-2 her step sister, she lodged an FIR alleging sexual assault. It appears that the applicant is in custody for the last five years. The appeal is of the year 2023 and is not likely to be heard in the immediate future.

9. Considering what is stated aforesaid, the application is allowed and the applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of his Appeal, on the following terms and conditions :

ORDER

(i) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;

(ii) The fine amount to be deposited within six months, if not deposited in the trial court.

(iii) The Applicant shall report to the trial Court, once in three months on the day/date specified by the trial Court, till the appeal is finally disposed of;

(iv) The Applicant shall keep the trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time.

(v) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

10. Interim Application is allowed in the aforesaid terms and accordingly disposed.

All concerned to act on the authenticated copy of this order.

GAURI GODSE, J.

REVATI MOHITE DERE, J.