

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 2598 OF 2022
IN
CRIMINAL APPEAL NO. 590 OF 2022

Rakesh Sadashiv Kamble ...Applicant/Appellant
Versus
The State Of Maharashtra And Anr. ...Respondents

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Mr. Aniket Nikam a/w Mr. Varad Ozarkar i/by Mr. Amit Icham,
Advocate for the Applicant/Appellant.

Ms. Tripty M. Kapadia, Advocate for Respondent No.2.

Ms. Pallavi N. Dabholkar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.
DATE : 8th JUNE, 2023.

PER COURT:

1. This is an application for suspension of sentence and grant of bail during the pendency of appeal challenging the judgment of conviction.
2. The applicant was tried for offences under Sections 376(2)(n), 506 of Indian Penal Code (for short “IPC”) and Sections 3(a), 4, 5(J)(ii) & 6 of the Protection of Children from Sexual Offences Act, 2012 (for short ‘POCSO Act’). Vide Judgment and order dated 12.04.2022, the applicant has been convicted for offences under Section 376(2)(n), 506 of IPC and Section 3(a) punishable under

Section 4 and Section 5(J)(ii) punishable under Section 6 of the POCSO Act and sentenced to suffer imprisonment of 10 years and 20 years respectively.

3. Learned counsel for the applicant submitted that the victim and her mother has not supported the prosecution case. The conviction is based only on the DNA report which suffers from serious infirmities. The procedure followed for collecting the blood samples and conducting test, DNA was faulty which is evident from the cross examination conducted at the instance of the accused. The applicant is in custody for two and half years. Learned counsel for the applicant has relied upon the decision in the case of *Suresh Karbhari Wadage Vs. The State of Maharashtra* dated 13.07.2017 delivered in Criminal Appeal No.413 of 2015.

4. Learned A.P.P. and learned Advocate for Respondent No.2 submitted that, although the victim has not supported the prosecution case, the DNA report is positive indicating that the applicant and the victim were the biological parents of the fetus. There is no effective cross examination to doubt the veracity of DNA report.

5. Perused the notes of evidence. From the evidence of the victim and her mother it is apparent that they were declared hostile

and even in the cross examination conducted by the prosecution, their version could not be disturbed in any manner. Thus, the entire case is based on the DNA report. From the evidence of Investigating Officer and the other evidence on record it appears that the defence has doubted the genuineness of the DNA report. This fact will have to be determined finally at the stage of final hearing. However, considering the factual aspects that the victim has not supported the prosecution case and nature of evidence, the sentence of imprisonment can be suspended.

ORDER

- i. Interim Application No. 2598 of 2022 is allowed;
- ii. The substantive sentence of imprisonment imposed vide Judgment and order dated 12.04.2022 passed by learned Extra Joint Additional Sessions Judge, Karad in Special Case No.18 of 2020 is suspended and the applicant is directed to be released on bail on executing PR. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- iii. The applicant shall report the concerned Police Station once in six months on first Saturday of the month between 11.00 am. to 1.00 noon till the final disposal of the appeal;
- iv. Interim Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)