



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 2997 OF 2023
IN
CRIMINAL APPEAL NO.535 OF 2023

Pravin Prakash Kirve

...Applicant

Versus

1. The State of Maharashtra

...Respondents

2. XYZ

Mr. Chetan Deshmukh for the Applicant.

Mr. K. V. Saste, APP for the State.

CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.

DATE : 28th 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 20th March 2023 passed by the learned Additional Sessions Judge-12, Nashik has been convicted for the offence punishable under section 6 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act') and has been sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.10,000/-, in default, to suffer three months simple imprisonment. He submits, that infact, the applicant has not been awarded a separate sentence for the offence under section 376, since he was found guilty under section 6 of the POCSO Act.

4. Learned counsel for the applicant submits that the applicant has been convicted under the POCSO Act, despite the fact, that the prosecution had failed to prove, that the prosecutrix was a minor, at the time of the alleged incident. He submits that the birth certificate of the prosecutrix was not placed or brought on record, by the prosecution and as such, the conviction of the applicant cannot be sustained.

5. He submits that even the medical evidence of the doctor, does not point to the complicity of the applicant, in as much as, the doctor in his evidence does not say that the prosecutrix was sexually assaulted.

6. Learned APP opposed the application.

7. Perused the papers, in particular, the evidence of the prosecutrix and of the Doctor. According to the prosecutrix, the applicant took her to his flat once and then once to his friends flat where she was sexually assaulted. She has further stated that on one day, the applicant's wife saw them i.e. the applicant and the prosecutrix together getting down from the motor cycle, pursuant to which the prosecutrix informed her mother, after which an FIR was lodged.

8. Prima facie there appears to be some substance in the submission of the learned counsel for the applicant, that the prosecution has not brought on record the birth certificate of the prosecutrix, to prove her date of birth.

9. It is not in dispute that the applicant was on bail pending trial and that he has not abused or misused the conditions the imposed on him.

10. 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 the aforesaid 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 Applicant shall report to the trial Court, once in four months on the day/date specified by the trial Court, till the appeal is finally disposed of;
- (iii) 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.
- (iv) 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.

11. 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.