

rajshree

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.4165 OF 2022
IN
APPEAL NO.4 OF 2023

Amleshkumar Umesh Sah	]	..	Appellant
vs.			
State of Maharashtra & Anr.	]	..	Respondents

Mr.Gaurav Parkar for the Applicant.

Ms.P.N. Dabholkar, APP for the State-Respondent No.1.

Mr.S.A. Quazi, for Respondent No.2.

CORAM : BHARATI DANGRE, J

DATE : 29th March, 2023.

P.C.

1] The Appeal being admitted, Interim Application is taken out, seeking suspension of sentence and for release of the Applicant on bail, on the ground that finding of conviction rendered by the Sessions Court is perverse, as it has not appreciated the evidence in its right perspective.

2] The Interim Application is filed by the Applicant, who came to be convicted for committing offence punishable under Section 7 and 8 of the POCSO Act and is sentenced to suffer Rigorous Imprisonment for 3 years and to pay fine of Rs.5000/- in default to undergo Rigorous

Imprisonment for 3 months. He is also convicted for committing offence punishable under Section 9(m) of the POCSO Act and sentenced to suffer Rigorous Imprisonment for 5 years and to pay fine of Rs.6000/- in default to undergo RI for 4 months.

3] With the able assistance of the learned counsel for the Appellant, the learned APP and the learned counsel for Respondent No.2, I have perused the impugned Judgment and the notes of evidence placed, before me.

The incident was presented before the Sessions Court through PW 3- the victim girl, aged 11 years, who narrated that on the date of incident, when she was all alone in the juggi and cooking food, a person whom she referred to as 'Bhaiya' residing in the room opposite to her room, came inside and on the pretext of asking what she had cooked, and he closed the door of the tin shed and embraced her and pressed her chest. She got scared and ran towards her grand-parents who were working on the site, as usual. As per her version, 'Bhaiya' went to his room.

After some time she returned with her grandparents and pointed to one person as the one, who had committed the act with her. His name was disclosed as Amlesh Kumar Sah. She clarified in her examination-in-chief that since her grand-parents asked for the name of the person, it was revealed to her. She also stated that she know him.

4] Her version is corroborated by PW 1 who is her grandmother, who deposed that when the victim girl approached them and informed about the incident, they accompanied her to the house and when they reached near the room, one person was standing there and she

pointed a finger at him, as the person who had misbehaved with her. His name was Amlesh Kumar Sah.

5] In the cross-examination of the victim, she has admitted that room of the appellant is not in front of her hutment. She also admit that when the accused was in her house for 2-3 minutes, it was dark inside the room. She also admit that it took 10-15 minutes for her to return alongwith her grandparents and she was not aware of the name of the person, when she went to her grandparents.

She categorically admit that accompanying with her grandparents, when she reached the room, nobody was there, and therefore they went to the room of 'Bhaiya', but nobody was also present outside the room. She state that the door of one of the room belonging to 'Ek Bhaiya' was opened and when she peeped inside, she identified him. The said person was caught and other Bhaiyas and Thekedars also gathered there.

In her statement under Section 164 of the Cr.P.C., she had not given name of the Appellant.

6] The Investigating Officer, PW 4 has revealed that during the investigation it was noticed that two persons working on the site whom she referred as Bhaiya were absent and one was Amit Mohito and the other, Rajkumar. Accused came to be arrested and Rajkumar reported to duty and there was no complaint in respect of those two persons, who went absconding.

7] On perusal of the above version and the manner in which the learned Judge has appreciated the evidence in recording the finding of

guilt against the present Appellant, deserve a detail appreciation of the evidence.

The Appellant is aged 33 years who was working as labour and while scrutinizing the accusation levelled against him, entire evidence will have to be carefully scanned.

The present Appellant is incarcerated on being convicted on 21.07.2022. Since the Appeal is admitted, I deem it appropriate to suspend the sentence and release him on bail on furnishing PR bond in the sum of Rs.25,000/- with one or more solvent sureties in the like amount.

However, to ensure that the Appellant do not intimidate the victim or her family members, it would be necessary to direct that the Appellant shall not work on the site where he was earlier working and shall not set his foot in Khairwadi, Mahan, Alibag, District-Raigad.

Since it is informed that he is ordinary resident of Bihar, he shall also not leave the State, without prior permission of this Court and shall mark his attendance in concerned Police Station on first Saturday of every month.

[BHARATI DANGRE, J]