

2. The prosecution case is that the victim had boarded the local train and she was followed by the accused and he outraged her modesty. The victim had apprehended the accused with the help of some passengers and thereafter the Police Constable accompanied them to Mulund Police Station and subsequently the First Information Report (for short 'FIR') was registered with Dadar Police Station.

3. Learned Advocate for the applicant submitted that the applicant was on bail during the trial. The trial Court had suspended the sentence on the date of conviction. The prosecution case suffers from the serious infirmities. The victim has not produced any evidence in the nature of ticket or railway pass to show that, she was travelling in the train on the day of incident. The Investigating Officer has not collected the CCTV footage to show the presence of applicant and the victim at the spot of incident. The case of the victim is that, she was accompanied by her friend. However, the statement of the friend of victim was not recorded. Spot panchanama was not recorded. The passengers who had apprehended the accused along with the victim were not examined. These discrepancies goes to the root of the matter and the conviction based on such infirmities will have to be set aside at the appropriate stage.

4. Learned A.P.P. pointed out that the previous orders passed by this Court on 25.01.2023, 11.04.2023 and 24.04.2023. The sentence was initially suspended by this Court vide order dated 25.01.2023 by way of interim relief and notice was issued to the complainant. Subsequently the interim order was continued on 08.03.2023. On 11.04.2023 the Court indicate that there is evidence against the applicant and the interim relief need not be confirmed. The parties were directed to collect the paper book and it was further directed that till the hearing of the appeal, the interim order shall continue to remain in force. Subsequently, vide order dated 24.04.2023, the matter was adjourned to 12.06.2023. Form the order dated 11.04.2023 it appears that, interim order was continued till final disposal of appeal. However, it was indicated that the appeal could be heard. The interim order was again continued on 11.07.2023, although the fact remains that it was in force in view of previous order.

5. Learned A.P.P. submitted that, there is direct evidence against the applicant. The statement of the victim clearly attributes overt act to the applicant. The applicant was involved in the act of outraging the modesty. He was apprehended by the victim. PW-1, who is the constable, who was accompanied them has supported the prosecution case.

6. Learned counsel for Respondent No.2 reiterated the submissions of learned A.P.P. It is submitted that there is evidence to show the involvement of applicant in the crime. There is no reason to disbelieve the version of the victim. The sentence imposed by the trial Court is of three years. The sentence was suspended on the date of conviction. Interim relief was granted by this Court vide order dated 25.01.2023 which is in force. The applicant/appellant has urged several discrepancies as referred to herein above. The appeal is of 2022. It is not possible to take up the appeal out of turn, whereas several other appeals challenging order of conviction are pending in this Court. Considering all the aforesaid circumstances, I pass the following order :

ORDER

- i. Interim Application Nos.4465 of 2022 & 4464 of 2022 are allowed;
- ii. The substantive sentence of imprisonment imposed vide Judgment and order dated 23.11.2022 passed by the learned Special Judge (under POCSO Act), Gr. Mumbai in POCSO Special Case No.169 of 2019 is suspended by continuing the interim order dated 25.01.2023 and the applicant is directed to be released on same bail as in the trial Court with fresh bond.
- iii. Applications stand disposed of.

(PRAKASH D. NAIK, J.)