



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 373 OF 2024
IN
CRIMINAL APPEAL NO. 74 OF 2024

Parmeshwar s/o. Vitthal Shingare,
Age : 23 years, Occ : Labour,
R/o : Kandari (Bk), Taluka Badnapur,
District Jalna. ... Applicant

Versus

1. The State of Maharashtra
Through Police Inspector,
Police Station, Badnapur,
District Jalna.
2. xyz ... Respondent

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Mr. Suraj R. Bagal, Advocate h/f Mr. B. N. Gadegaonkar, Advocate for
the Applicant.

Mr. N. D. Batule, APP for the Respondent-State.

Ms. Shilpa Avchar, Advocate for Respondent No.2 [appointed]

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CORAM : ABHAY S. WAGHWASE, J.

DATED : 28.02.2024

ORDER :

1. Convict, who has preferred Criminal Appeal No. 74 of 2024
against judgment and order of conviction dated 29.12.2023 passed by
Extra Joint District Judge and Additional Sessions Judge (POCSO),
Jalna in Special Case No. 42 of 2001, is praying for suspension of
sentence and grant of bail.

2. Learned counsel for the applicant submitted that crime was registered for commission of offence under Sections 354-D and 506 of the Indian Penal Code [IPC] and Section 12 r/w 11 of the Protection of Children from Sexual Offences Act, 2012 [POCSO Act]. It is further pointed out that prosecution had adduced evidence of 10 witnesses. That, there was improper appreciation of evidence. That, the learned trial Judge has held appellant guilty, but for offence under Sections 354-D and 506(I) of IPC, whereas appellant is acquitted from the offence under Section 12 r/w 11 of the POCSO Act. It is pointed out that, sentence awarded is of two years only and to pay fine. That, against the said judgment, appeal has been preferred, but as much more time would be required for decision of appeal on merits, hence, it is prayed that sentence be suspended and applicant be granted bail during pendency of appeal.

3. Learned APP opposes the application on the ground that offence is serious. Evidence of victim has been appreciated.

4. However, on court query, learned APP conceded that yet no appeal has been preferred by the State for acquittal of accused from the provisions of POCSO Act.

5. Perused the papers. It is revealed that Badnapur Police Station registered crime vide FIR No. 473 of 2020 for offences under Sections 354-D and 506 of IPC and Section 12 r/w 11 of the POCSO Act. It seems that in support of its case, prosecution has adduced evidence of in all 10 witnesses including victim. Learned trial court seems to have held that, only offence under Sections 354-D and 506(I) of IPC has been made out. Operative part shows that sentence awarded is simple imprisonment for two years with fine for offence under Section 354-D IPC and simple imprisonment for one year with fine for offence under Section 506(I) IPC.

6. Considering the quantum of sentence and as appeal is of the year 2024, which obviously will take long time to be heard and decided, so also the fact that applicant was on bail during trial, relief of suspension of sentence and grant of bail deserves to be granted. Hence, I proceed to pass the following order:

ORDER

- I. Criminal Application stands allowed.
- II. The substantive sentence imposed on the applicant Parmeshwar s/o. Vitthal Shingare in Special Case No. 42 of 2021 by learned Extra Joint District Judge and Additional Sessions Judge (POCSO), Jalna on 29.12.2023 stands suspended till the final hearing and disposal of Criminal Appeal No. 74 of 2024.

- III. The applicant be released on P. R. Bond of Rs.15,000/- (Rupees fifteen thousand only) with two solvent sureties in the like amount.
- IV. The applicant shall not commit any criminal activity.
- V. The applicant shall remain present before the learned trial Judge once in six months, till final hearing and disposal of the appeal, commencing from the date he tenders bail papers and thereafter, the trial Judge to fix dates for his subsequent appearances.
- VI. In case of two consecutive defaults on the part of the applicant to remain present before the trial Court, the trial Court to inform this Court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicant.
- VII. Bail before the trial court.

[ABHAY S. WAGHWASE, J.]

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