



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 551 OF 2024
IN
CRIMINAL APPEAL NO. 112 OF 2024

Sagar S/o Gautam Sable,
Age: 25 years, Occ: Labour,
R/o Takshashil Nagar, Near Batco Transport,
Juna Mondha, Aurangabad. ... Applicant

Versus

The State of Maharashtra and another ... Respondents

...
Mr. Nilesh S. Ghanekar, Advocate for Applicant.
Mrs. Chaitali Choudhari Kutti, APP for Respondent - State.
Mr. Vishal A. Chavan, Advocate for Respondent No.2 (Appointed).
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 19th JUNE, 2024

PRONOUNCED ON : 8th JULY, 2024

ORDER :

1. Vide instant application, convict for offence punishable under sections 363, 376-AB, 354-A(2) of Indian Penal Code (IPC) r/w section 4(2) and 8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), is praying for suspension of sentence and grant of bail on account of his conviction recorded by Special Judge (POCSO), Aurangabad in Special Case (POCSO) No.383 of 2021.

2. In support of relief, learned counsel for applicant pointed out that, applicant faced trial for above offences and after having found guilty, he has been sentenced to suffer 20 years imprisonment. He further pointed out that, victim's testimony does not inspire confidence. That, there was no cogent evidence on the point of kidnapping as alleged. That, victim herself met accused after leaving High Court premises and accompanied accused to several places. That, she also spent considerable time with family members of accused without informing or resisting. Unfortunately, her entire testimony has been relied and accepted by learned trial court. That, evidence of mother is hearsay information. That, even victim's testimony suggest that offence itself was not complete, as she categorically stated that, accused tried and attempted. Even medical evidence also does not support the prosecution. Therefore, offence of rape was not at all committed. That, even during recording statement, there were clear leading questions and trial court permitted the same. Thus, according to him, prejudice has been caused to accused. That, victim also admitted in cross examination that she herself telephoned accused. Learned counsel pointed that, she also left the house in anger and moreover also answered that she was not willing to give statement against accused. Thus, according to learned counsel, implication itself is at the instance of mother. That, there is a good case on merits in

appeal. That, applicant is barely 25 years of age and hence he prays for suspension of sentence and grant of bail during pendency of appeal.

3. Opposing the above application, learned APP pointed out that serious offence has been committed. Victim is barely 11 to 12 years of age. She has been removed from her custodian guardians. That, age of the victim is proved by leading cogent evidence. Therefore, all ingredients for which applicant was charge-sheeted being available, learned trial court correctly convicted accused and case being serious, she prays to dismiss the application.

4. Learned counsel for victim also opposed the application on the ground that victim is minor. That, grave offence of kidnapping, rape and offence under POCSO Act are proved beyond reasonable doubt. That victim's evidence is trustworthy and rightly accepted. That, there is medical evidence. Considering the gravity of offence, he also prays to dismiss the application.

5. Heard each of the side at length. Applicant seems to be charge-sheeted for offence punishable under sections 363, 376-A, 354-A of IPC r/w section 4 and 8 of POCSO Act. Case of prosecution

seems to be rested on evidence of in all five witnesses comprising of PW1 victim, PW2 mother, PW3 and PW4 are Pancha and PW5 Medical Expert.

6. According to prosecution, victim was 11 years of age. Birth certificate (Exh.27) confirms that she was born on 19.09.2010. Therefore, on the day of incident, she was barely 11 years of age and hence a minor. Victim in her evidence at Exh.20, stated that, she knew accused. On 11.10.2021, he offered her for outing and she accompanied him to Karnapura on motorcycle and then went to his house and even stayed for a day. In examination in chief itself, she has stated that, family members of accused made inquiries with her and even tried to drop her at her house, but she informed that, her mother had been to Pune. She also stated that, after dinner she slept with mother of accused. She stated that, accused woke up her and took her to room and tried to have physical relations with her in spite of she refusing. That, he attempted to make forceful relationship.

7. Once, victim is minor and she categorically deposed that, she was forced by accused, offence get attracted. Though applicant is said to be 25 years of age, he is already held guilty on trial. If applicant so desires, his appeal can be taken up for hearing

itself. Hence, at this stage, prayers for suspension of sentence and bail are turned down.

8. The criminal application stands rejected.

9. Fees of learned Advocate, who is appointed to represent the cause of respondent no.2, is quantified at Rs.3,000/- to be paid by High Court Legal Services Sub-Committee, Aurangabad.

(ABHAY S. WAGHWASE, J.)