

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.918 OF 2024
IN
CRIMINAL APPEAL NO. 195 OF 2024

Shaikh Atiq Shaikh Khadar,
Age : 29 years, Occu. : Labour,
R/o. Kranti Nagar, Parbhani,
Tq. & Dist. Parbhani.

.... Applicant

Versus

1. The State of Maharashtra

2. X - Victim

.... Respondents.

...

Mr. Sudarshan J. Salunke, Advocate for Applicant
Mr. S. M. Ganachari, APP for Respondent - State
Mr. J. R. Nawale, Advocate for Respondent No.2 (Appointed)

...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 22nd MARCH, 2024

PRONOUNCED ON : 3rd APRIL, 2024

ORDER :

1. Convict for offence punishable under section 8 of Protection of Children from Sexual Offences Act, 2012 (POCSO Act), vide judgment and order dated 29.01.2024 is seeking suspension of sentence and grant of bail during pendency of appeal.

2. According to learned counsel for applicant, accused was made to face trial on accusation that, on 05.02.2020, he

forcible dragged down Salvar of Victim (PW4) and passed urine on her person. That, learned trial Judge accepted the case of prosecution and convicted applicant for offence punishable under section 8 of POCSO Act, but he was acquitted from offences punishable under sections 376-AB of IPC and section 6 of POCSO Act. Evidence of prosecution has not been correctly appreciated by learned trial Judge and therefore, appeal has been preferred. However, much more time would be required to hear and decide the appeal. It is further pointed out that, applicant was on bail during trial and for above reasons, relief of suspension and bail is prayed for.

3. Learned counsel for victim as well as learned APP, both, strongly opposed the application, stating that, victim was barely 6 to 7 years of age. There is medical evidence about penetrative sexual assault and carnal intercourse. Accused is said to be maternal uncle of victim, but still he has indulged in such grave offence and victimized his own niece. CA reports are positive. Considering the magnanimity of the evidence, both learned counsel prayed to refuse the suspension of sentence and grant of bail.

4. After considering the submissions of both sides and on going through the papers, it seems that, present applicant was

charge-sheeted for commission of offence under section 376-AB of IPC and section 6 and 8 of POCSO Act. Case of prosecution seems to be rested on testimonies of seven witnesses. By examining PW2 prosecution seems to have been established that, victim was 6 years of age at the time of incident. Crucial evidence is of doctor and victim, who are examined as PW3 and PW4, respectively.

On visiting the evidence of both these witnesses, case of prosecution seems to be established. It seems that, on 05.02.2020, when victim's mother was busy seeing a new born child, the incident took place and she noticed victim crying and on inquiry, she disclosed name of applicant and further said that, he caught her hand and took her in the house, pulled down her legins, got himself undressed and committed carnal intercourse and further passed urine on her person. Medical evidence corroborates child's testimony.

5. Therefore, considering the nature of offence, circumstances and relations between victim and accused, this court does not deem it a fit case for grant of relief. Hence, I proceed to pass the following order :-

ORDER

The Application stands rejected.

(ABHAY S. WAGHWASE, J.)

6. After pronouncement of order, learned counsel Mr. Sudarshan J. Salunke for applicant submits that, applicant intends to approach Hon'ble Apex Court against the order of rejection passed by this court. He further pointed out that, learned trial Court had suspended the sentence upto appeal period. That, same relief be continued till applicant approaches Hon'ble Apex Court.

7. Learned APP opposed on the ground that, application for suspension being rejected by this court, such relief may not be continued.

8. In the light of above submission, judgment and order of trial court is visited. It seems that, learned trial Judge has in its order dated 29.01.2024 suspended the sentence till appeal period is over. Now, this application is decided, but applicant intends to approach the Hon'ble Apex Court and for that, some time would be spent. Consequently, it is desirable that said relief of suspension of sentence should be extended for a period of 30 days from today.

(ABHAY S. WAGHWASE, J.)