



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 962 OF 2024
IN
CRIMINAL APPEAL NO. 206 OF 2024

Nagesh @ Abhishek Kanta Raktate
Age: 21 yrs. Occ. Rickshaw Driver.
R/o Hussein Colony, Galli No.3,
Aurangabad, Tq. & Dist. Aurangabad.

... Applicant.
(Orig. Accused)

Versus

1. The State of Maharashtra
Through Police Station Pundliknagar,
Be Aurangabad.

2. X.Y.Z.

... Respondents.

...
Mr. Rahul M. Jade, Advocate for Applicant (Through V.C.)
Mr. S. M. Ganachari, APP for Respondent No.1.
Ms. Rakhi V. Sundale, Advocate for Respondent No.2 (Appointed)
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 05 APRIL, 2024

PRONOUNCED ON : 10 APRIL, 2024

ORDER :

1. Convict for offence under sections 363, 354-A(2) and 179 of Indian Penal Code (IPC) and under section 8 of POCSO Act by the Special Judge (POCSO) at Aurangabad in Special Case (POCSO) No. 361 of 2021 is hereby seeking suspension of sentence and grant of bail during pendency of appeal.

2. Learned counsel for applicant submitted that, applicant was tried for above offence and was held guilty for above offences. According to him, maximum sentence awarded is three years and to pay fine. He further pointed out that during trial he was on bail. Even after conviction learned trial court has exercised provisions under section 389 of Cr.P.C. and has granted bail. Convict has preferred appeal recently and has every hope of succeeding as there is good case on merits. However, according to him, much more time would be required to hear and decide the appeal and till then he prays for suspension of sentence as well grant of bail.

3. Learned APP as well as learned counsel for victim, both strongly opposed the application on the ground that serious offence has been committed. Victim was 12 years of age. She has deposed regarding act of the accused. Further, learned counsel for victim expressed possibility of misuse of liberty, if applicant is granted bail.

4. Heard respective parties. Admittedly, applicant is held guilty of above offences and operative part shows that maximum sentence awarded for three year and to pay fine. Statement is made across the bar that both pre-conviction and post conviction,

applicant was on bail. This is not denied by prosecution. Apparently, appeal is filed in 2024 and obviously would take much more time to be heard and decided.

Resultantly, considering the quantum of sentence, nature of allegations and above facts, relief as prayed 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 Nagesh @ Abhishek Kanta Raktate in Special (POCSO) Case No. 361 of 2021 by the Special Judge (POCSO) at Aurangabad on 01.02.2024 stands suspended till the final hearing and disposal of Criminal Appeal No.206 of 2024.
- (iii) The applicant be released on P.R. Bond of Rs.15,000/- (Rs. 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 their 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.)