



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

912 CRIMINAL APPLICATION NO. 1238 OF 2024
IN APEAL/269/2024

DATTU PAHADSING BAGUL (BHIL)
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

Mr.R.L. Jakhade h/f. Mr. S.A. Kulkarni, Advocate for the Applicant.
Ms.Ashlesha A. Deshmukh, APP for the Respondent/State.
Mr.R.D. Sanap, Advocate (appointed) for Respondent No.2.

CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 07.05.2024
PRONOUNCED ON : 09.05.2024

ORDER :-

01. This is an application for suspension of substantive sentence and grant of bail by virtue of conviction and sentence recorded by the learned Sessions Judge, Shahada, in Special Case No. 4 of 2018 dated 21.02.2024.

02. The learned Counsel for the applicant submits that the applicant was charge-sheeted for commission of offences under sections 354-A(i), 354-D, 354, 452, 504, 427 r/w 34 of the Indian Penal Code and Sections 8 and 12 of the Protection of Children From Sexual Offences Act. It is pointed out that finally guilt is recorded for the offence punishable under sections 354-A(i),

354-D, 354, 452, 504 and 427 r/w 34 of the IPC and sections 8 and 12 of the POCSO Act. It is pointed out that maximum sentence awarded is of four years. The applicant is barely 25 years of age. The learned Counsel points out that the brother who was allegedly accompanying the victim has not been examined. That the medical expert did not notice any internal or external injuries. The applicant was on bail during the Trial and the appeal would take long time to be heard and decided. Therefore, it is prayed that relief of suspension of substantive sentence and bail be granted.

03. The application is strongly opposed by the learned APP by pointing out that the victim is a minor and she has identified the accused in test identification parade. That there are two episodes; one at 6.30 p.m. and another at around 8.30 p.m. There are allegations of outraging modesty. On complete satisfaction, guilt has been recorded. For all above reasons, the learned APP prays to refuse suspension of substantive sentence as well as bail.

04. The learned Counsel for the victim also opposed the application by pointing out that there is clear allegation of outraging modesty and crime is committed on a minor and therefore the applicant does not deserve the

relief as prayed.

05. After considering the submissions of both the sides and on going through the papers, it transpires that the crime was registered with Sarangkhedda Police Station for commission of offence under sections 354-A(i), 354-D, 354, 452, 504 and 427 r/w 34 of the IPC and sections 8 and 12 of the POCSO Act, regarding the occurrence which allegedly took place on 27.02.2018. Apparently, the complaint seems to have lodged on next day i.e. on 28.02.2018.

. Considering the nature of charge, evidence of the victim at this stage is of significance. She is examined as PW-1. On going through her testimony, it transpires that when she went to her brother to a grocery shop, at around 6 pm. she claims, that a person came from backside and caught hold of her. Therefore, she ran to the house. She alleged that again at 07.30 p.m., 3 to 4 persons came to their house. There was abuse.

06. As regards present applicant is concerned, there is allegation that he caught hold of her and outraged her modesty. It seems that regarding occurrence dated 27.02.2018, test identification parade is done on

09.03.2018. The learned Trial Judge seems to have sentenced the applicant for three years imprisonment and to pay fine for each of the above offences.

07. Admittedly, appeal is filed in 2024 questioning the judgment and order decided in February 2024. Obviously much more time is required to hear the appeal. Taking above nature of allegations in to consideration and above discussed material, relief as prayed deserves to be granted. Accordingly, I proceed to pass following order :-

ORDER

(I) Criminal Application stands allowed.

(II) The substantive sentence imposed on the applicant in Special Case No.04 of 2018 by the learned Special Judge, Shahada, on 21.02.2024 stands suspended till the final hearing and disposal of Criminal Appeal No. 269 of 2024.

(III) The applicant Dattu Pahadsing Bagul (Bhil) be released on PR. Bond of Rs.30,000/- (Rupees Thirty 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.]