



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

909 CRIMINAL APPLICATION NO. 1564 OF 2024
IN APEAL/586/2024

Rameshwar Vishnu Poul,
Age : 28 years, Occupation : Labour,
R/o. Digras Poul, Tq. Selu,
Dist. Parbhani.

... Applicant

Versus

The State of Maharashtra and another

... Respondents

...
Advocate for Applicant : Ms. Sabahat T. Kazi (Appointed through Legal Aid)
APP for Respondent - State : Mrs. Chaitali Choudhari Kutti
Advocate for Respondent No.2 : Mrs. Ashwini Lomte (Appointed)

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CORAM : ABHAY S. WAGHWASE, J.

DATED : 11th JULY, 2024

PER COURT :

1. Convict, who has preferred appeal against judgment and order passed by learned Additional Sessions Judge, Parbhani dated 20.12.2023, is at this stage, praying for suspension of sentence and grant of bail during pendency of appeal.

2. Learned counsel for applicant pointed out that, there is conviction for offence punishable under section 354-A of Indian Penal Code (IPC) and under section 8 of the Protection of Children From Sexual Offences Act, 2012 (POCSO Act) and applicant is awarded

sentence for four years and to pay fine. That, against the said conviction appeal has been preferred recently. It is pointed out that, since almost 18 months applicant is behind the bars. That, case of prosecution in trial court is based on seven witnesses. That, there are material contradictions even in the testimony of victim. That, there being improper appreciation, appeal has been preferred and applicant has a good case on merits in appeal. As according to learned counsel, appeal would take long time to be heard and decided, relief of suspension and grant of bail are pressed into service.

3. Learned APP for State as well as learned counsel for complainant, both strongly opposed the application. The common points asserted are that, victim is barely 7 to 8 years of age. Her date of birth has been substantiated in trial court by adducing cogent and reliable evidence. That, there is prompt FIR. Learned counsel for complainant pointed out that, conviction of present appellant is for the second time for similar offence and as such he is habitual and according to her he is also a recidivist. For above reason, both, learned APP as well as learned counsel for complainant prayed to refuse the relief as sought.

4. Heard the respective parties at considerable time. In this application, there are prayers for suspension of sentence and grant of bail

by virtue of conviction recorded by learned Additional Sessions Judge, Parbhani in Special Case (POCSO) No. 35 of 2023 recording conviction of applicant for offence punishable under section 354-A of IPC and under section 8 of POCSO Act and operative part of the judgment shows that he has been directed to suffer simple imprisonment for four years. Submission of learned APP and learned counsel for complainant that present crime is second one against present applicant and previously also he was on trial convicted for same offence has not been refuted. Therefore, it is clear that, applicant is a recidivist, who is convicted for similar offence previously also and now also he is found guilty for outraging modesty of victim, who is said to be a school going girl and barely 7 to 8 years of age.

5. Therefore, taking the same into account, this court does not find it a fit case to extend any relief as prayed for. Hence, I proceed to pass the following order :-

ORDER

- (i) The criminal application stands rejected.
- (ii) Fees of learned Advocate, who is appointed to represent the cause of respondent no.2 to be paid by High Court Legal Services Sub-Committee, Aurangabad as per rules.

(ABHAY S. WAGHWASE, J.)