



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1767 OF 2023
IN
CRIMINAL APPEAL NO. 688 OF 2023

Jakir Hussain Malik Hussain Lohawala,
Age : 35 years, Occupation Watchman,
R/o Dakhani Manjil, Noor Colony,
Town Hall, Aurangabad,
Taluka and District Aurangabad.

... Applicant
[Orig. Accused]

Versus

1. The State of Maharashtra
Through Police Station Officer,
City Chowk Police Station,
Taluka and District Aurangabad.

2. X Y Z

... Respondents

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Mr. Prasad B. Kadam, Advocate for the Applicant.
Mr. S. M. Ganachari, APP for Respondent No.1-State.
Mrs. Vaishali A. Shinde (More), Advocate for Respondent No.2.
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CORAM : ABHAY S. WAGHWASE, J.

DATED : 17.04.2024

ORDER :

1. On account of conviction recorded by learned Special Judge
(POCSO) Aurangabad in Special Case (POCSO) No. 336 of 2021
dated 22.11.2022, sentencing applicant to suffer imprisonment for

offences punishable under Sections 376(2)(f)(i)(n) and 506 of Indian Penal Code [IPC] and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 [POCSO Act], convict is hereby seeking relief of suspension of sentence and grant of bail during pendency of appeal.

2. In support of relief, learned counsel for the applicant pointed out that applicant was chargesheeted by City Chowk Police Station for above offences and tried by learned Special Judge, who recorded guilt for offences under Sections 376(2)(f)(i)(n) and 506 of IPC and Sections 4 and 6 of POCSO Act and he is sentenced to suffer 20 years imprisonment and 3 years imprisonment and to pay fine respectively for above offences. Learned counsel submits that there is false implication. That, there are allegations against real brother himself. That, prosecution could not establish that victim was minor. There is no independent evidence or corroboration to the testimony of victim. Moreover, there is delayed complaint. That, forcibly DNA samples are obtained. However, still conviction is recorded. According to him, applicant has a good case on merits, but appeal being filed recently and as it would take long time to be heard and decided, he prays for above relief.

3. In answer to above, learned APP pointed out that accused is real brother. He had committed offence on his younger sister who was minor. There is sufficient evidence establishing her age. Because of close relation and out of fear, victim did not report promptly. That, there is plausible explanation for the delay and the same has been considered by learned trial Judge in correct perspective. Moreover, forensic evidence like DNA report confirms involvement of applicant. Serious offence has been committed and so he is rightly held guilty and hence, considering the peculiar relation between victim and accused, he prays that relief so prayed may be refused.

4. Learned counsel appointed on behalf of respondent no.2-victim pointed out that victim was minor. There is no cross as regards to age so as to now question the credibility of evidence on age of victim. She pointed out that victim being minor, there is no question of consent or passive submission. Crime has been investigated only on disclosure by victim and medical evidence is corroborating victims evidence. Therefore, she also submitted that in view of relation between complainant and accused, it is not appropriate to grant relief as prayed.

5. Heard both sides. Perused the papers.

6. It seems that accused was chargesheeted by City Chowk Police Station, Aurangabad for above offences. Victim is examined as PW1 and in her substantive evidence she gave her age as 16 years and she also gave date of birth as 23.09.2005. By examining PW8 Headmistress of school at Exhibit 66, age is sought to be proved by prosecution. Record shows that PW4 and PW6 i.e. Resident Doctor and Medical Officer respectively, at Government Medical College and Hospital, Aurangabad and PW5 - Medical Officer at MGM Hospital, Aurangabad are examined as medical witnesses. Victim seems to have conceived. DNA samples are also collected and forensic expert is also examined. Evidence of PW1 victim at Exhibit 21 shows that accused is her elder brother. She has deposed that he had evil eye on her and in absence of other family members, he used to force himself on her by issuing threats. She has stated that she was forced upon two to three times and finally she conceived. Victim seems to have delivered a male child. PW7 Assistant Chemical Analyzer, at exhibit 55, on analysis, issued opinion that victim PW1 and appellant are biological parents. Report to that extent is placed on record. Therefore, there is overwhelming evidence about age as well as alleged episode of rape.

7. Therefore, taking such material into consideration and further considering the peculiar circumstances in which the incident took place and moreover, considering the fact that accused and victim are real brother and sister, this Court does not find it a fit case for extension of benefit as prayed. Hence, I proceed to pass the following order :

ORDER

The application is rejected.

[ABHAY S. WAGHWASE, J.]

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