



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1453 OF 2023
IN APEAL/548/2017

Shaikh Akhlakh Shaikh Latif,
Age : 28 years, Occu. : Auto Driver,
R/o. Mohammad Nagar Bhokar,
Tq. Bhokar, Dist. Nanded.

... Applicant

Versus

1. The State of Maharashtra
Through Police Station Bhokar,
Tq. Bhokar, Dist. Nanded.
2. XYZ,
R/o., C/o. Bhagwan Pimpale,
Village Ekamba, Tq. Umarkhed,
Dist. Yeotmal

... Respondens

...
Mr. Govind G. Suryawanshi, Advocate for Applicant
Mr. S. M. Ganachari, APP for Respondent - State
Mr.S. A. Kulkarni, Advocate for Respondent No.2 (Appointed) (Through V.C.)
...

WITH

CRIMINAL APPLICATION NO. 1526 OF 2021
IN APEAL/411/2021

Parmeshwar Madhav Suryawanshi,
Age : 22 Years, Occu. : Auto Driver,
R/o. Guntur, Tq. Kandhar, District Nanded.
At present Central Prison,
Harsool, Aurangabad

... Appellant.
(Orig. Accused No.3)

Versus

1. The State of Maharashtra,
Through the Police Station Officer,
Police Station Bhokar,
Tq. Bhokar, Dist. Nanded

2. XYZ

... Respondents.
(Orig. Complainant)

...

Mr. Hemraj P. Kshirsagar, Advocate for Applicant
Mr. S. M. Ganachari, APP for Respondent - State
Mr. S. A. Kulkarni, Advocate for Respondent No.2 (Appointed) (Through V.C.)

...

WITH

**CRIMINAL APPLICATION NO. 2376 OF 2020
IN APEAL/679/2020**

Pandurang Punjabrao Pilewar,
Age : 22 Years, Occu. : Labour,
R/o. Khaja Nagar, Near Shani,
Mandir, Bhokar, Tq. Bhokar,
Dist. Nanded.
At present Central Prison,
Harsool, Aurangabad.

... Applicant
(Orig. Accused)

Versus

1. The State of Maharashtra
Through the Police Station Officer,
Police Station Bhokar,
Tq. Bhokar, Dist. Nanded.

2. XYZ

... Respondents.

...

Mr. Mahesh P. Kale, Advocate for Applicant
Mr. S. M. Ganachari, APP for Respondent - State
Mr. S. A. Kulkarni, Advocate for Respondent No.2 (Appointed) (Through V.C.)

...

CORAM : ABHAY S. WAGHWASE, J.

DATED : 08th JANUARY, 2024

ORDER :

1. All above three applications are moved by convicts in
Special POCSO No. 06 of 2015 and they are all praying for
suspension of sentence and grant of bail.

2. Prosecution was launched against all three applicants for commissions of offences under sections 376(2)(i) & 376(D) of Indian Penal Code (IPC) and Section 5(g) punishable under section 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

3. The common points urged by each of the learned counsel for applicants are that, there is false implication. There are allegations of commission of offence on a victim, who is shown to be a minor, but according to them, there is no full-proof or conclusive evidence about victim to be a minor. Inviting attention of the court to the FIR, it is submitted that, victim herself left the house and had been to the another person on 17.09.2015. That, she stayed and spent night with said person, namely Karan, but he is not examined nor he is made witness or an accused. It is further pointed out that, victim claims to have come in contact with present applicants at railway station, thereafter she traveled with them in a rickshaw to a hotel, and thereafter, she has alleged forcible sexual assault. That, in fact there is no medical evidence about forceful sexual assault. Even T.I. parade has been held at belated stage.

4. All learned counsel appearing for each of the accused unanimously pointed out that, applicants are in jail for more than 8 years and hence they are entitled for relief of suspension of sentence as well as bail.

5. Learned APP would point out that serious offence has been committed. There is a gang-rape on a girl, who is barely 14 years of age and moreover this is a case of atrocity as victim belongs to reserve category. Finding complicity of each of the applicants, on careful evaluation of evidence and taking settled legal position into consideration, learned trial judge has convicted them. They are sentenced to suffer at least 20 years for the grievous offences committed by them and as such they are not entitled for any relief.

6. After hearing submissions of each of the sides and on going through the papers, it is emerging that, prosecution was launched by Bhokar police station and sum and substance of the accusation is that, victim belongs to Adivasi community and she has taken education upto 6th standard. That, certain circumstances compelled her to leave the house and so she came to railway station and at Mudkhed railway station she came in contact with one Karan and he took her to his grand mother and thereafter, on

18.09.2015, he dropped her back to Bhokar by railway, asking her to go back to her village. When she was sitting on the railway station, she was overheard while she interacted with a lady, and thereafter, applicant in Criminal Application No. 1453 of 2023 started interacting with her, took her to the hotel, made phone call to his friends. It is alleged that, she was offered tea and biscuits and they took her in a rickshaw to village Palaj. Taking disadvantage of her giddiness, it is alleged that, all three applicants took turns in forcing themselves on her and after threatening to kill by use of knife, they ravished her and left her. Victim seems to have herself approached police station and on her report crime seems to have registered bearing No.139 of 2015.

7. On being charge-sheeted and tried, learned trial Judge has held applicants guilty for offence punishable under sections 376(2)(i) & 376(D) of IPC and Section 5(g) punishable under section 6 of the POCSO Act. Operative part of the order shows that, all three applicants are sentenced to suffer 20 years rigorous imprisonment and further to pay fine.

8. Though they are acquitted of charges under sections 366 and 506 of IPC and provisions under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, there is

apparently guilt recorded for offences punishable under sections 376(2)(i) & 376(D) of IPC and Section 5(g) punishable under section 6 of the POCSO Act. Though half-hearted attempt is made to show that there is no evidence regarding age, evidence on record shows otherwise. Only on establishment of age and medical evidence along with other circumstantial evidence and testimony of victim, the conviction is recorded. Taking the gravity of offence into consideration, applicants do not deserve relief as prayed.

9. All Criminal Applications are hereby rejected.

(ABHAY S. WAGHWASE, J.)