



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2925 OF 2024
IN APEAL/652/2024

Santosh S/o. Kachruba Warkad,
Age : 32 years, Occ. : Labour,
R/o. Amla, Tq.Dharur,
Dist. Beed.

... Applicant

Versus

1. The State of Maharashtra,
Through Police Inspector,
Police Station, Sirsala,
District Beed.

2. X.Y.Z.

... Respondents.

....

Advocate for Applicant : Mr. Rameshwar M. Bhagwat h/f.Mr. Vaibhav
Atulrao Solanke

APP for Respondent - State : Mrs. Ashlesha S. Deshmukh

Advocate for Respondent No.2 : Mr. Rakesh C. Bramhankar
(appointed Through Legal Aid)

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CORAM : ABHAY S. WAGHWASE, J.

DATED : 07 OCTOBER 2024

PER COURT :-

1. This is an application with prayers for suspension of
sentence and grant of bail on account of conviction recorded under
section section 354-A and 506 of Indian Penal Code (IPC) and section
8 and 12 of the Protection of Children from Sexual Offences Act, 2012

(POCSO Act) by learned Additional Sessions Judge, Kaij, District Beed in Sessions Case No. 09 of 2023.

2. Learned counsel for applicant in support of above relief pointed out that, there are several infirmities in the case of prosecution. That, moreover, complainant and applicant are cousins. He pointed out that, there is delay in lodging FIR. He also pointed out that, alleged incident taken place while applying Mehandi, but there is no incriminating evidence in the form of *mehandi cone*, which was allegedly to be used for applying Mehandi. He submitted that, applicant has a good case on merits in appeal and he has every hope of succeeding in the same. That, applicant was on bail during trial. However, appeal being of 2024, it is submitted that, it will take long time to be heard and decided. For all above reasons, relief is pressed into service.

3. Learned APP as well as learned counsel appearing for respondent no.2 complainant strongly opposed the application by submitting that evidence of victim is convincing. Finding her alone, her modesty has been outraged. That, her age is proved and it falls under the definition of child as prescribed in the POCSO Act. On complete appreciation, learned trial Court has recorded the guilt and for above reasons, they both prayed to reject the application.

4. Heard each of the side at length. Papers show that, applicant was tried for commission of offence under sections under sections 354, 506 of IPC and Sections 7, 8, 11 and 12 of POCSO Act and by judgment and order dated 10.07.2024, he is held guilty for offence punishable under sections 354-A, 506 of IPC and sections 8 and 12 of POCSO Act. Victim is apparently minor. It is also not disputed that, they are in relations. Incident seems to have taken place in the house of appellant when victim visited his house for applying Mehendi. That time, it is alleged that after shutting the door he outraged her modesty. From her statement, *prima facie*, it appears that, after hearing her shouts, her father came, but she avoided to inform him and claims to have informed her mother. Learned APP to the court query, submitted that, Mehendi was not found to be applied when accused was arrested. Learned counsel for complainant would emphasize that just before the application of Mehendi incident had taken place. Therefore, there are disputed facts.

5. Applicant was said to be on bail during trial, maximum sentence awarded is three years and appeal being of 2024, obviously, some more time would be required to hear and decided the appeal. Resultantly, considering the nature of allegations, relief as prayed deserves to be granted. Hence, the following order.

ORDER

- (i) Criminal Application stands allowed.
- (ii) The substantive sentence imposed on the applicant - Santosh S/o. Kachruba Warkad in Sessions Case No.09 of 2023 by learned Additional Sessions Judge, Kaij, District Beed on 10.07.2024 stands suspended till the final hearing and disposal of Criminal Appeal No.652 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 his subsequent appearances.
- (vi) In case of two consecutive defaults on the part of the applicants 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.]