



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2587 OF 2024

IN

CRIMINAL APPEAL NO. 567 OF 2024

WITH

CRIMINAL APPLICATION NO. 3403 OF 2024

IN

CRIMINAL APPEAL NO. 567 OF 2024

Santosh s/o Maroti Bhandare
Age: 25 years, Occu: Driver,
R/o: Bhadarpur, Taluka Kandhar,
District : Nanded.

... Applicant
[Orig. Accused]

Versus

1. The State of Maharashtra
Through Police Station Bhagyanagar,
Taluka Kandhar, District Nanded.

2. X. Y. Z.

... Respondents

.....

Mr. Shrimant Mundhe, Advocate for the Applicant.
Mr. Ashlesha S. Deshmukh, APP for Respondent No.1-State.
Mr. G. G. Suryawanshi, Advocate for Respondent No.2.

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 04.09.2024

Pronounced on : 09.09.2024

ORDER :

1. Both above applications are for relief of suspension of sentence
during pendency of appeal, as well as grant of bail by virtue of

conviction recorded by learned Extra District Judge-1 and Additional Sessions Judge, Nanded in Special Case No. 26 of 2022.

2. In support of relief, learned counsel for the applicant pointed out that there is false implication. Victim is shown to be 15 years of age but her age has not been proved as required by law. That, in fact there was love affair and whatever instances took place, are consensual one. There was no force, as according to learned counsel, medical evidence does not suggest any external injuries. He further submitted that on internal examination, medical expert noticed old hymen tear and there was no fresh tear to attribute it to the applicant. He pointed out that even applicant is merely 24 years of age. Though there was charge under Sections 363 and 366A along with 376(2)(n) of the Indian Penal Code [IPC] and Sections 5 and 6 of the Protection of Children from Sexual Offences Act, 2012 [POCSO Act], there is already acquittal from charge of Sections 363 and 366A of IPC.

3. It is further pointed out that initially, though applicant was arrested, he was given benefit of bail. That, now appeal has been preferred recently and as it would take long time to be heard and more particularly, as applicant has a good case on merits, it is prayed that relief of suspension as well as grant of bail be granted.

4. Learned counsel for the applicant seeks reliance on the following rulings :

1. ***Bhagwam Rama Shinde Gosai and Others v. State of Gujarat*** AIR 1999 SC 1859.
2. ***Sidharth @ Sidhu Gosavi v. The State of Goa*** [order dated 30.01.2023 by learned Single Judge of the High Court of Bombay at Goa, in Criminal Misc. Application No. 12 of 2023 in Criminal Appeal No. 4 of 2023]
3. ***Pravin @ Bandu Ashok Dake v. The State of Maharashtra*** [order dated 11.08.2020 by learned Single Judge of this Bench in Criminal Application No. 3831 of 2019 in Criminal Appeal No. 1153 of 2019]
4. ***Ravi Hareshbhai Patni v. State of Gujarat*** [order dated 28.02.2023 by learned Single Judge of the High Court of Gujarat at Ahmedabad in Criminal Misc. Application No. 1 of 2023 in R/Criminal Appeal No. 201 of 2023]
5. ***Sandam Bhogen Meetei v. State of Manipur*** [Judgment and order dated 23.08.2022 by learned Single Judge of the High Court of Manipur at Imphal in Bail Appln. No. 32 of 2018 in Cril.J.A. No. 4 of 2018]
6. ***Jarnail Singh v. State of Haryana*** AIR 2013 SC 3467.
7. ***P. Yuvaprakash v. State Rep. By Inspector of Police*** 2023 LiveLaw (SC) 538.

8. ***Alex P.V. v. State of Kerala*** [judgment dated 13.07.2021 by the Division Bench of the High Court of Kerala at Ernakulam in CRL. A No. 416 of 2016]

5. Learned APP as well as learned counsel for the victim, both strongly opposed on the ground that victim has deposed about sexual intercourse not once, but twice. She was minor and was studying in 8th standard. On promise of marriage, she was taken. Being minor, there is no question of her consent. That, after full-fledge trial and on complete appreciation, guilt has been recorded for serious offence. It is further pointed out that applicant was married and already had a daughter, but taking disadvantage of the minor while working as a driver of her aunt, he took her to Ahmedabad. There, he had forcible sexual intercourse. Offence being serious, they both prayed to dismiss the application.

6. After considering the submissions and on going through the papers on record, it seems that present applicant was chargesheeted and tried by learned Special Judge for offence punishable under Sections 363 and 366A along with 376(2)(n) of IPC and Sections 5 and 6 of the POCSO Act. Operative part of the order shows that

conviction has been recorded for offence under Section 376(2)(n) of IPC and Section 5(l) punishable under Section 6 of the POCSO Act, against which appeal has been filed, but during pendency of the same, both above applications for suspension as well as bail are pressed into service.

7. Perused the testimony of PW2 which is at Exhibit 61. It is emerging that while she was studying in 8th standard and was 15 years of age, when she had been to eat *pani puri*, applicant came there in a car and offered her to flee for performing marriage. He initially took her to Loha and from there to Aurangabad on motorcycle and then took her to Ahemadabad. Her evidence shows that there, he had physical relation with her by force on 23.01.2022 and 24.01.2022. Police seem to have brought them home on 25.01.2022. Apparently, victim was school going girl. Case is put forth that there is no age proof, however, PW1 mother in her evidence has given age of the victim as 14 years 2 months at the time of the incident. Even victim has stated that at the time of incident, she was studying in 8th standard. PW3 medical expert has given findings which are consistent with sexual intercourse. Therefore, it cannot be said that there was no external or internal injuries to hold rape. Prosecution seems to have examined as may as 10 witnesses and on

complete appreciation of evidence, there is acquittal from charge under Sections 363 and 366A of IPC but there is conviction for offence under Section 376(2)(n) of IPC and Section 5(1) punishable under Section 6 of the POCSO Act.

8. Perused the rulings and judgments relied by learned counsel for the applicant. Facts in those cases are distinct and cannot be equated to consider grant of relief here. Considering the nature of offence, guilt recorded on complete appreciation and more over, when applicant was said to be married and father of a daughter, and in spite of being aware of victim to be minor, he had taken her to other State and had allegedly involved in forcible sexual intercourse. Therefore, this Court does not consider it a fit case to extend relief as prayed. Hence, I proceed to pass the following order :

ORDER

The applications are dismissed.

[ABHAY S. WAGHWASE, J.]