



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

919 CRIMINAL APPLICATION NO. 3983 OF 2024
IN
CRIMINAL APPEAL NO. 851 OF 2024

Mukesh @ Siddharth Eknath Wagh

Age: 30 yrs, Occupation: labour,

R/o. Baudhawada, Karwand,

Tq. Shirpur, Dist. Dhule.

....Applicant

VERSUS

1. The State Of Maharashtra
Through Shirpur City Police Station,
Shirpur, District: Dhule.

2. XYZ

.....Respondent

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Mr. Nima R. Suryawanshi, Advocate for applicant

Mr. N.B. patil, APP for respondent-State

Mr. Amol S. Mali, Advocate for respondent No. 2

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON: 13th NOVEMBER, 2024

PRONOUNCED ON: 18th NOVEMBER, 2024

ORDER :

1. This application is filed for suspension of sentence and grant of bail in consequence of judgment and order of conviction dated 18.07.2024 passed by Special Judge (POCSO) and Additional Sessions Judge, Dhule in Special Case No. 11/2017.

Bhagyawant Punde

2. Learned counsel for applicant submits that there is conviction for offence punishable under Section 354 of Indian Penal Code and under section 10 of Protection of Children From Sexual Offences Act. Sentence awarded is of five years. Learned counsel points out that accused is barely 24 years of age. FIR is lodged by mother, who was not eye witness and law is set in a motion on hearsay information. Learned counsel points out that at the time of incident, though, informant was out of the house victim's grandparents were present, but they were not examined. There is also delay in lodging FIR. Learned Trial Court convicted applicant solely on the statement of informant, which is hearsay information. That, apparently there is previous enmity between applicant and father of victim as crime has been registered by father of victim. Therefore, there is false implication of the applicant. Applicant has good case on merit in appeal and hence as appeal would take long time to be heard, sentence of applicant be suspended and he may be set at liberty till conclusion of appeal.

3. Learned APP for State and learned counsel for respondent No. 2-victim both strongly opposed the application pointing out that victim is barely four years of age. She has

narrated the incident which took place with her. Serious offence has been committed against the child. Charge under section 10 of POCSO Act is duly established and therefore, they both pray for rejection of application.

4. Heard learned counsel for applicant, learned APP for respondent No. 1-State and learned counsel for respondent No. 2-victim. Perused the papers.

5. Admittedly, present applicant has been held guilty by Special Court for offence under Section 354 of IPC and under section 10 of POCSO Act. It seems that case of prosecution is rested on evidence of five witnesses. Victim is said to be barely four years of age. It transpires that when victim was alone, applicant lured her by offering sweet and took her inside the house, disrobed her, he himself got undressed and slept naked over her. Victim has informed PW1-mother after she reached home and thereafter FIR seems to have been lodged. Statement of victim is also recorded at Exhibit-47. Learned APP and learned counsel for respondent No. 2 both invited attention of this Court to the question No. 40 and 50 put to her during examination of victim in the Court. Considering the answers therein, victim also appears to have stated that after removing her clothes accused

slept naked on her. Therefore, considering the nature of accusations and gravity of offence, no case is made out by applicant for grant of relief as prayed. The application is therefore dismissed.

[ABHAY S. WAGHWASE, J.]