



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4196 OF 2024
IN
CRIMINAL APPEAL NO. 933 OF 2024

Bhavrao S/o. Hilal Bhil,
Age : 25 Years, Occu. : Labour,
R/o. Dangurne, Tal. Shindkheda,
Dist. Dhule.

... Applicant

Versus

1. The State of Maharashtra,
Through Sindhkheda Police Station,
Tal. Sindhkheda & Dist. Dhule.

2. X.Y.Z.

... Respondents.

.....
Mr. Vinay B. Anjanwatikar, Advocate for Applicant.
Mrs. Ashlesha S. Deshmukh, APP for Respondent - State.
Ms. Pooja K. Apache, Advocate for Respondent No.2 (Appointed)
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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 13 NOVEMBER 2024

PRONOUNCED ON : 18 NOVEMBER 2024

ORDER :

1. This is an application for suspension of sentence and grant of bail as a result of conviction recorded by Special Judge and Additional Sessions Judge, Dhule in Special Case No.9 of 2015, dated 01.04.2023 recording guilt of the applicant for commission of offence punishable under sections 363 and 376(2)(i) of Indian Penal Code (IPC) and section 4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

2. Learned counsel for applicant pointed out that, applicant was charge-sheeted and tried for above offences. By judgment and order dated 01.04.2023 he has been held guilty and sentenced to suffer 7 years imprisonment for commission of offence punishable under section 4 of POCSO Act and 3 years for commission of offence under section 363 of IPC. It is pointed out that, as on today, applicant has already spent behind the bars more than 4 years and 10 months i.e. he has been spent more than half of the sentence. That, there is challenge to the judgment and conviction by filing appeal. It is submitted that, appeal being of 2024, it will take long time to be heard and decided and hence learned counsel prays for relief of suspension of sentence and grant of bail during pendency of appeal.

3. Learned APP as well learned counsel for victim, both strongly opposed the application by submitting that girl was barely over 12 years of age. That, she was removed from the custody of her parents and physical relations were maintained with her. That, learned counsel for victim pointed out the cross of victim and would submit that, girl has categorically stated that she was raped, and therefore, offence being serious, they both opposed the relief as prayed.

4. After considering the submissions and on going through the papers, it seems that trial Judge has appreciated the evidence of victim, her parents as well as that of PW7 Prof. Kapileshwar, PW8 Dr. Milind and PW10 Sunanda, Head Master. Apparently, prosecution has proved that victim was minor.

5. Considering the evidence of victim and medical evidence, offence under sections 363 and 376(2)(i) of IPC and section 4 of POCSO Act is recorded by trial court on getting satisfied about evidence to that extent. Merely because applicant has spent 4 years out of seven years behind the bars, is no good ground to grant relief. More particularly, in view of serious offence being proved to be committed, this court does not find it a fit case for grant of relief as prayed. Hence, I proceed to pass the following order :-

ORDER

1. The criminal application is hereby rejected.
2. Fees of learned Advocate, who is appointed to represent the cause of respondent no.2 to be paid by High Court Legal Services Sub-Committee, Aurangabad as per rules.

(ABHAY S. WAGHWASE, J.)