



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3673 OF 2023
IN
CRIMINAL APPEAL NO. 886 OF 2023

Gajanan @ Gaju @ Nagoba S/o Narba Baulkar,
Age: 30 Years, Occu: Agri,
R/o: Wangi Phata, Injegaon,
Tq. & Dist. Nanded.

... Applicant.

Versus

1. The State of Maharashtra,
Through, Police Officer,
Police Station Gramin, Tq. & Dist. Nanded

2. X.Y.Z.

... Respondents.

...

Mr. A. D. Hande, Advocate for Applicant
Mr. N. D. Batule, APP for Respondent – State
Ms. Renuka Ghule Palve, Advocate for Respondent No.2 (Appointed)

...

CORAM : ABHAY S. WAGHWASE, J.

DATED : 27th FEBRUARY, 2024

ORDER :

1. Convict, who has preferred Criminal Appeal No. 886 of 2023 against judgment and order of conviction dated 31.08.2023 passed by Extra District Judge-1 and Additional Sessions Judge, Nanded in Special Case No. 101 of 2020, is praying for suspension of sentence and grant of bail.

2. Learned counsel for applicant submitted that, crime was registered for commission of offence under section 354A and

354D of the Indian Penal Code (IPC) and section 11(i)(iv) punishable under section 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and under sections 3(1)(w) & 3(2)(v)(a) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC & ST Act). It is further pointed out that, prosecution had adduced evidence of 7 witnesses. That, there was improper appreciation of the evidence. That, the learned Judge has held appellant guilty, but for offence under section 354A of IPC and for rest of the offences he is acquitted. It is pointed out that, sentence awarded is of three months only and to pay fine. That, against the said judgment appeal has been preferred, but as much more time would be required for decision of appeal on merits, hence, it is prayed that sentence be suspended and applicant be granted bail during pendency of appeal.

3. Learned APP opposed the application on the ground that, offense is serious. Evidence of victim has been appreciated.

4. However, on court query learned APP conceded that yet no appeal has been preferred by State for acquittal of accused from provisions of POCSO Act and SC & ST Act.

5. Perused the papers. It is revealed that, Nanded

Gramin police station registered crime No. 149 of 2020 for offences under section under sections 354A and 354D of IPC and section 11(i)(iv) punishable under section 12 of the POCSO Act and under sections 3(1)(w) & 3(2)(v)(a) of SC & ST Act. It seems that, in support of its case prosecution adduced evidence of in all 7 witnesses including victim. Learned trial court seems to have held that, only offence of 354A has been made out. Operative part shows that, sentence awarded is rigorous imprisonment for three months and also to pay fine.

6. Considering the quantum of sentence and as appeal is of 2023, obviously it takes long time to be heard and decided, relief of suspension of sentence and grant of bail deserves to be granted. Hence, I proceed to pass the following order :-

ORDER

- (i) Criminal Application stands allowed.
- (ii) The substantive sentence imposed on the applicant Gajanan @ Gaju @ Nagoba S/o Narba Baulkar in Special Case No.101 of 2020 by the learned Extra District Judge-1 and Additional Sessions Judge, Nanded on 31.08.2023 stands suspended till the final hearing and disposal of Criminal Appeal No.886 of 2023.

- (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 their subsequent appearances.
- (vi) In case of two consecutive defaults on the part of the applicant 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.)