



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3801 OF 2023
IN
CRIMINAL APPEAL NO. 60 OF 2024

Rahul s/o Balu Patil @
Rahul s/o Arun Patil,
Age 24 years, Occ.- Labour,
R/o – Lonkhedi,
Taluka and District Dhule.

... Applicant

versus

1. The State of Maharashtra

2. XYZ

... Respondents

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Mr. R. S. Shinde h/f Mr. Amol S. Sawant, Advocate for the Applicant.
Mr. N. D. Batule, APP for Respondent No.1-State.
Ms. Anagha N. Pedgaonkar, Advocate for Respondent No.2
[appointed].

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 25.01.2024

Pronounced on : 31.01.2024

ORDER :

1. This is an application for suspension of substantive sentence and grant of bail as a result to conviction recorded by Special Judge (POCSO)/Additional Sessions Judge, Dhule in Special (POCSO) Case No. 59 of 2021 dated 26.06.2023 for commission of offence under Sections 363 r/w 511, 354-A and 506 of the Indian Penal Code [IPC]

and Section 8 of the Protection of Children from Sexual Offences Act, 2012 [POCSO Act].

2. It is submitted that prosecution was launched on allegation of commission of offence under Sections 363 r/w 511, 354-A, 506 of IPC, Section 11 r/w 12 of POCSO Act and Sections 3(1)(r)(i) and 3(2)(va) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 [SCST Act]. It is submitted that here, prosecution has at the outset failed to establish that victim was below 18 years of age at the time of incident. It is submitted that during trial, accused was on bail. Victim and accused are residents of same locality. Learned trial court has straightway accepted the case of prosecution and has not considered the defence raised or the cross of victim. It is pointed out that even prosecution failed to establish that victim belong to scheduled category and therefore she was victimized. Even learned trial court has acquitted applicant from charge under the provisions of the SCST Act. That, conviction has been recorded for 3 years and 6 months. That, as appeal would take much more time to be heard and decided, he prays for suspension of sentence and grant of bail.

3. Resisting the above application, learned APP would submit that offence is serious. Victim is established to be below 18 years of age. There are allegations of lifting and carrying the victim at mid night hours. There is evidence of neighbour and therefore, considering the nature of offence, he prays to dismiss the application.

4. Similarly, learned counsel appointed on behalf of respondent victim also resisted by pointing out that victim is a student. After threatening to throw her in well, she was taken. Her father himself is an eye witness. Serious offence has been committed and therefore prayers are made to dismiss the application for suspension of sentence and bail by expressing possibility of misuse of liberty.

5. After considering the submissions, it seems that Dhule Taluka Police Station registered crime bearing no. 143 of 2021 for above offences. Alleged incident seems to have taken place at around 02.00 a.m. on 18.04.2021. Allegations are that when victim was sleeping in the courtyard, around 2.00 a.m., accused was seen holding hand of victim and forcing her to accompany him. It is also seen that he tried to forcibly drag her. Prosecution has examined victim as well as her father who is said to be an eye witness and one neighbour namely Nerkar [PW6]. Only defence raised here is that victim is not shown to

be below 18 years of age. However, here, victim has herself supported prosecution. Her father, who was also available, has also deposed apart from testimony of independent witness. Prosecution seems to have succeeded in establishing commission of offence punishable under Sections 363 r/w 511 and 354-A of IPC. There are said to be threats to kill and therefore conviction under Section 506 IPC also seems to have been fastened. Considering the nature of allegations and submissions advanced before this court, no case on merit is made out to suspend the sentence. Hence, I proceed to pass the following order:

ORDER

The application is hereby rejected.

[ABHAY S. WAGHWASE, J.]

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