



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4037 OF 2023
IN
CRIMINAL APPEAL NO.1061 OF 2023

Sachin @ Baburao S/o Vajinath Gore,
Age- 25 years, Occu- Agri.,
R/o Sidheshwar Nagar, Parali Vajinath,
Tq- Parali Vajinath, Dist. Beed.

... Applicant

Versus

1. The State of Maharashtra,
Through Police Station Officer,
Sambhajinagar Police Station,
Parali Vajinath, Tq. Parali Vajinath,
Dist. Beed.

2. SNS

... Respondents

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Mr. Nilkanth R. Pawade, Advocate for Applicant.

Mr. S. M. Ganachari, APP for Respondent – State.

Ms. Aishwarya C. Deshpande, Advocate for Respondent No.2
(Appointed).

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 22nd JANUARY, 2024

PRONOUNCED ON : 30th JANUARY, 2024

ORDER :

1. This is an application for suspension of sentence and grant of bail in the backdrop of conviction recorded by learned special Judge, Ambajogai in Special POCSO Case No.01 of 2022, tried for offence punishable under sections 354-A of Indian Penal Code (IPC) and section 8 of the Protection of Children From Sexual Offences Act, 2012 (POCSO Act).

2. Learned counsel for applicant submits that, there is false implication. Crime was registered for offence under sections 354-A of IPC and section 8 of POCSO Act for the allegations that there was outraging of modesty of victim, who is six years of age. Learned counsel submitted that, though prosecution claimed that there are eye witnesses i.e. PW5 Dnyaneshwar and PW6 Sidheshwar, it is submitted that, their cross belies their testimonies about they seen alleged occurrence. It is pointed out that, parties are at cross terms on account of previous allegations throwing garbage. That, accused is barely 23 years of age and he has preferred appeal against judgment of conviction, however, as much more time would be required to hear and decide the appeal, he submits that, sentence be suspended and bail be granted.

3. While opposing the relief, learned APP submitted that, there is victimization of barely six years old girl. There is direct eye witness account. Victim has also narrated the occurrence apart from giving statement under section 164 of Cr.P.C. before learned Magistrate, and therefore, considering the gravity of the offence, he submits that relief prayed be refused.

4. Learned counsel pointed out on behalf of victim and also strongly opposed on similar grounds that victim is six years

old girl. Accused himself took the victim to the rest room and committed the above act. She pointed out that, PW5 Dnyaneshwar and PW6 Sidheshwar, who had seen the act indulged into, have also stepped into witness box. Case was established by examining 8 witnesses. Even she opposed relief on the ground that offence is serious.

5. After considering the submissions of both sides and on going through the papers before this court, it seems that, FIR was lodged on 02.11.2021. Apparently, it seems that, victim is around 6 years of age.

The sum and substance of the complaint is that, on 02.11.2021, present applicant approached mother of the victim and took her son and daughter on the pretext of giving them crackers. Around 2:30 p.m., complainant's neighbour brought children back and told that, one Dnyaneshwar had seen present applicant feeling his hands over the breast and back of the victim in bathroom with bad intention. Therefore, she lodged report and crime seems to be registered for offence under section 354-A of IPC and section 8 of POCSO Act. Later on, charge seems to be altered for offence under section 10 of POCSO Act and applicant was made to face trial and find him held guilty and sentenced to suffer imprisonment for six years and to pay fine.

6. *Prima facie*, it is alleged that accused took victim, a minor to the bathroom, removed her undergarments, after pouring water in it, he moved hand over her breast and back and pressed her breast and even caught hold of her hand when she tried to prevent him. Therefore, it seems that learned trial court has accepted prosecution case.

7. On court query, learned counsel fairly conceded that applicant was not on bail during trial. Taking above nature of allegation into consideration, age of victim, age of accused and the circumstances in which incidence has taken place, it is emerging that, accused is acquainted with complainant and he had allegedly taken her in the bathroom and moved his hands over her back and pressed her breast. Taking such accusations into consideration and as much more time would be required to deal and decide the appeal, which is filed in November 2023, relief as prayed deserves to be granted. Hence, I proceed to pass following order :-

ORDER

- (i) Criminal Application stands allowed.
- (ii) The substantive sentence imposed on the applicant Sachin @ Baburao s/o Vajinath Gore in Special POCSO Case No.01 of 2022 by the learned Additional Sessions Judge/Special Judge (POCSO), Ambajogai, Dist. Beed on 27.09.2023 stands suspended till the final hearing and disposal of

Criminal Appeal No.1061 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 not enter the vicinity of village Parali Vaijnath, Taluka Parali Vaijnath, Dist. Beed, without prior permission of this Court, till disposal of the appeal.
- (vi) 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.
- (vii) 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.
- (viii) Bail before the trial Court.

(ABHAY S. WAGHWASE, J.)