



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4166 OF 2023
IN
CRIMINAL APPEAL NO.1095 OF 2023

1. Naresh S/o Prakash Chavhan,
Age 24 years, Occu: Labour,
R/o Priyadarshani Nagar,
Nagaonbari, Deopur, Dhule,
District Dhule.
2. Manish S/o Lahu Gavali,
Age : 24 years, Occu: Labour,
R/o 8, Jay Bajrang Colony,
Near Zenda Chowk, Walwadi Shivar,
Deopur, Dhule, District Dhule

... Applicants.

Versus

1. The State of Maharashtra
2. XYZ (victim)

... Respondents.

...

Mr. Ravindra S. Shinde h/f. Mr. Amol S. Sawant, Advocate for applicants.

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

Mr. Rakesh Brahmanekar, Advocate for Respondent No.2 (Appointed
through legal aid).

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CORAM : ABHAY S. WAGHWASE, J.

DATED : 22nd JANUARY, 2024

ORDER :

1. This is an application for suspension of sentence and
grant of bail by virtue of conviction recorded by learned Additional
Sessions Judge, Dhule dated 25.10.2023 in Special Case No. 36 of
2018 for the offences punishable under sections 354-D, 341 read

with section 34 of Indian Penal Code (IPC) and section 11(iv) read with section 12 of the the Protection of Children from Sexual Offences Act, 2012.

2. Learned counsel for applicants submitted that, there is conviction for offence under section 354-B of IPC and sentenced awarded for six months only. That, during trial applicants were on bail. Considering the quantum of sentence to be meager, in view of settled law, they are entitled for relief so prayed. According to him, he has good case on merits in appeal, but as much more time would be required for its decision, till then he seeks suspension of sentence and grant of bail.

3. Both learned APP as well as learned counsel for victim strongly opposed by submitting that, girl of barely 14 years of age has been victimized. There is no merit in the application and they prayed to dismiss the application.

4. After considering the submissions and on going through the papers, it is emerging that, crime was registered on 07.07.2018 for commission of offence under sections 354-D, 341 read with 34 of IPC and Section 11(iv) read with section 12 of POCSO Act, 2012. It seems that, victim was 14 years of age and the

sum and substance of the accusations are that, victim was studying in 10th standard and her father ran medical shop. Accused used to stare at her and even made gestures to her. In May 2018, she was alone in the shop of her father, both accused threw a chit in her shop, on which mobile number was written. Even 5 to 6 days prior to lodgment of compliant, while she was returning from school, her way was obstructed, and therefore, crime was registered.

Above discussions shows that, there are allegations of staring and making gestures. There is also allegation of throwing chit containing mobile number. Finally, when her way was obstructed, complaint seems to have been lodged.

Learned trial Judge seems to have convicted both accused, who are 19 years of age, to suffer simple imprisonment for six months and to pay fine.

5. Admittedly, applicants were on bail during trial. Learned trial Judge seems to have inflicted sentence of six months simple imprisonment. Considering the same and the nature of offences, more particularly considering the submission that applicants were on bail during trial, relief as prayed deserves to be granted. Accordingly, I proceed to pass following order :-

ORDER

- (i) Criminal Application stands allowed.
- (ii) The substantive sentence imposed on the applicants (1) Naresh S/o Prakash Chavhan and (2) Manish S/o Lahu Gavali in Sessions Case No.36 of 2018 by the learned Additional Sessions Judge/Special Judge (POCSO), Dhule on 25.10.2023 stand suspended till the final hearing and disposal of Criminal Appeal No.1095 of 2023.
- (iii) The applicants be released on P.R. Bond of Rs.15,000/- (Rs. Fifteen thousand only) each with two solvent sureties each in the like amount.
- (iv) The applicants shall not commit any criminal activity.
- (v) The applicants 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 applicants 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 applicants.

(vii) Bail before the trial Court.

(ABHAY S. WAGHWASE, J.)