



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4359 OF 2023
IN
CRIMINAL APPEAL NO. 1146 OF 2023

Bhagwat Dattu Pople,
Age : 40 years, Occu. : Labourer,
R/o Chimnapirwadi, Jatwada Road,
Tq. & Dist. Aurangabad.

... Applicant

Versus

1. State of Maharashtra through
Police Station Harsool,
Dist. Aurangabad.

2. X.Y.Z.

... Respondents.

...
Mr. Suyash S. Jangada h/f. Mr. Sachin S. Deshmukh, Advocate for
Applicant.

Mr. N. D. Batule, APP for Respondent - State.
Ms. Surekha Chincholkar, Advocate for Respondent No.2 (Appointed)

...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 05 MARCH 2024

PRONOUNCED ON : 13 MARCH 2024

ORDER :

1. Instant application is for suspension of sentence and grant of bail by virtue of conviction recorded by learned Special Judge (POCSO), Aurangabad in Special Case (POCSO) No. 239 of 2020, for offence punishable under sections 354 and 354A(2) of Indian Penal Code (IPC) and sentencing applicant to suffer rigorous imprisonment for one year for each of the offence and to pay fine.

2. In support of relief, learned counsel for applicant submitted that, there is false implication. Initially, crime was registered for only offence under section 354 of IPC and sections 8 and 12 of Protection of Children from Sexual Offences Act, 2012 (POCSO Act). Subsequently, there are allegations of 376 of IPC. Learned counsel submits that, age of victim is not proved beyond reasonable doubt. That, much more time would be required to hear and decide the appeal and so relief of suspension of sentence and grant of bail is pressed into service.

3. Learned APP as well as learned counsel for victim opposed the application on the ground that offence is serious and date of birth is proved.

4. In the light of above submissions and papers placed on record are visited. Crime seems to have been registered at Harsul Police Station, on the strength of complaint of victim dated 30.04.2020. Complaint seems to be lodged on the day of occurrence itself. Allegations are of outraging modesty when victim had been to fetch water on the well. It seems that, trial was conducted for offence under sections 354 and 354A(2) of IPC and sections 8 and 12 of POCSO Act. Prosecution seems to have adduced testimony of

PW1 victim, PW2 cousin sister and PW3 API Kame. Operative part shows that, guilt is recorded for offence under sections 354 and 354A(2) of IPC and there is acquittal for offence under sections 8 and 12 of POCSO Act. Learned trial court seems to have awarded sentence of one year for each of the above offence and to pay fine.

5. Considering the quantum of sentence, circumstances in which incident took place, nature of allegations and the fact that much more time would be required to hear and decide the appeal, prayers so raised are required 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 Bhagwat Dattu Pople in Special Case (POCSO) No. 239 of 2020 by learned Special Judge (POCSO), Aurangabad on 10.11.2023 stands suspended till the final hearing and disposal of Criminal Appeal No.1146 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.)