



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4589 OF 2023
IN
CRIMINAL APPEAL NO. 1197 OF 2023

Avinash s/o Suresh Dhangar,
Age 22 years, Occupation Agri.,
R/o Bhaver, Taluka Shirpur,
District Dhule.

... Applicant
[Orig. Accused]

Versus

1. The State of Maharashtra,
Through Police Inspector,
Chopda Police Station,
District Jalgaon.

2. X Y Z

... Respondents

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Mr. Vishal S. Nikale, Advocate for the Applicant.
Mr. S. M. Ganachari, APP for Respondent No.1-State.
Mr. Rahil R. Kazi for Respondent No.2 (absent)

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CORAM : ABHAY S. WAGHWASE, J.

DATED : 16.04.2024

ORDER :

1. Instant application is for suspension of sentence and grant of bail on account of conviction recorded by learned Special Judge and Additional Sessions Judge-2, Amalner in Special (POCSO) Case No. 4 of 2022 dated 06.11.2023.

2. In support of relief, learned counsel for the applicant submits that applicant was chargesheeted for commission of offences punishable under Sections 363, 366-A, 376(1)(A)(N) of Indian Penal Code [IPC] and Sections 3, 5(J), (2), 7, 11 r/w 4, 5(1), 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 [POCSO Act]. According to learned counsel, there is false implication. Learned trial court has convicted applicant for offences punishable under Sections 363, 376 of IPC and Section 4 of POCSO Act and he is acquitted from offences under Sections 366-A of IPC and Sections 3(J)(2), 7 r/w 8, 11 and 12 of POCSO Act. That, sentence awarded is of rigorous imprisonment for 10 years for commission of offence under Section 4 of the POCSO Act and for 5 years for commission of offence under Section 363 of IPC.

3. He further submitted that victim is shown to be 17 years of age, but there is no cogent proof. Moreover, accused is barely 20 years of age. That, appeal has been preferred in the year 2023 against the above conviction and the same is pending and would take long time to be finally heard and decided. Therefore, considering young age of applicant, learned counsel prays for suspension of substantive sentence and grant of bail.

4. Learned APP strenuously opposed on the ground that offence is serious. That, on due satisfaction, offence of kidnapping and rape as well as offence under Section 4 of the POCSO Act is recorded by learned trial Judge. That, prosecution has adduced evidence of 18 witnesses. There is correct appreciation and therefore, considering the nature of offence, he prays to reject the application.

5. After considering the submissions of both sides and on going through the papers, it seems that Chopda City Police Station chargesheeted applicant for offence punishable under Sections 363, 366-A, 376(1)(A)(N) of IPC and Section 3, 5(J), (2), 7, 11 r/w 4, 5 (1), 8 and 12 of POCSO Act.

6. At this stage, evidence of victim needs to be put to scrutiny. She is examined as PW2. By examining PW16, age of victim seems to have been proved. According to prosecution, date of birth of victim is 22.10.2004 and occurrence took place on 15.12.2021. There are allegations that she was kidnapped and further subjected to sexual assault. Learned trial Judge has put to scrutiny the prosecution evidence, more particularly that of victim, her parents and medical evidence, and finally has held charges under Section 363 and 376 of IPC and Section 4 of POCSO Act to be proved and above sentence has

been awarded. Considering the nature of offence and nature of charge, this Court does not find it a fit case to grant benefit as prayed.

Hence, following order is passed :

ORDER

The application is rejected.

[ABHAY S. WAGHWASE, J.]

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