



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 188 OF 2024
IN
CRIMINAL APPEAL NO. 45 OF 2024

Gulam Rasool Shaikh Mastan Momin
Age - 21 years, Occu - Labour,
R/o. Millat Nagar, Tq. Chopda,
Dist. Jalgaon

... Applicant

Versus

1. The State of Maharashtra
2. XYZ

... Respondent

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Mr. Shaikh Samir Ahmad Saifuddin, Advocate for the Applicant.

Mr. A. A. A. Khan, APP for Respondent No.1-State.

Mr. Chetan Barku Choudhari Advocate for Respondent No.2.

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WITH
CRIMINAL APPLICATION NO. 4569 OF 2023
IN
CRIMINAL APPEAL NO. 1186 OF 2023

Shaikh Mujakkir Hamid Pinjari
Age - 28 years, Occu – Labour,
R/o. Manyar Ali Chopda,
Dist. Jalgaon.
At present : Amalner, Dist. Jalgaon.

... Applicant

Versus

1. The State of Maharashtra
2. XYZ

... Respondents

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Mr. Shaikh Mohammad Naseer, Advocate for the Applicant.

Mr. A. A. A. Khan, APP for Respondent No.1-State.

Mr. Shajahan N. Shaikh, Advocate for Respondent No.2

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CORAM : ABHAY S. WAGHWASE, J.

DATED : 16 JULY 2024

ORDER :-

1. Both above applications for suspension of sentence and grant of bail during pendency of appeal are directed against judgment and order of conviction recorded by Additional Sessions Judge, Amalner in Special Case No.1 of 2020 recording guilt of present applicants for offence under Sections 363, 366-A r/w 34 of the Indian Penal Code [IPC] and Section 12 of the Protection of Children from Sexual Offences Act, 2012 [POCSO Act].

Submissions of behalf of Applicant in Criminal Application No. 188 of 2024 :

2. Learned counsel for the applicant Gulam Rasool submitted that applicant was tried vide Special Case No. 1 of 2020. He is held guilty for commission of offence under Sections 363, 366-A r/w 34 of IPC and under the provisions of POCSO Act. That, learned trial court convicted and sentenced him to suffer imprisonment for seven years. Learned counsel submitted that there are allegations that victim was kidnapped while she was returning from educational institution. He pointed out that there is material suggesting love affair. That,

applicant is barely 20 years of age. He has preferred appeal and he has every hope of succeeding in the same. Hence, he prays for the relief.

Submissions of behalf of Applicant in Criminal Application No. 4569 of 2023 :

3. Learned counsel for the applicant Shaikh Mujakkir pointed out that he is made co-accused without any role played by him. Learned counsel further pointed out that except meeting main accused at the bus stand, there is no participation of this applicant in any of the offence. That, however, he is also held guilty. That is why there is challenge to the judgment, but appeal will take long time to be heard and so, he too prays for suspension of sentence and grant of bail.

Submissions on behalf of the State as well as Victim:

4. While opposing both the applications learned APP as well as respective counsels appearing for victim in two distinct applications/appeals, pointed out that victim is 15 years of age. That, in trial, her age has been substantiated. That, the accusations of kidnapping are cogently proved. Considering the charge under POCSO Act along with the penal sections, they prayed to reject both the applications.

5. This is an application for suspension of sentence and grant of bail upon conviction recorded by Additional Sessions Judge, Amalner for offence under Sections 363 r/w 34 and 366-A r/w 34 of IPC and Section 12 of the POCSO Act. Operative part of the order shows that for each of the above offences under IPC, sentence awarded is of 7 years and to pay fine. No separate sentence is awarded for offence under Section 12 of the the POCSO Act. Admittedly, both applicants have preferred two distinct appeals bearing Criminal Appeal Nos. 45 of 2024 and 1186 of 2023, which pending admission.

6. Perused the statement of victim which is of relevance and significance at this time. She seems to be examined as PW3 at Exhibit 42. Substance of her evidence is that, at the time of incidence she was studying in 10th standard. According to her, occurrence took place on 06.11.2019. She claims that while she was going to school around 6.45 a.m., accused Rasool met her and offered her to join him to Amalner. She claims that she refused, upon which he expressed his love towards her and threatened that he would disclosed her parents that she is married with him. So, out of fear, she claims that she joined him. They went to ST Stand Chopda and from there to ST Stand Amalner. She stated that there, accused applicant Rasool made a phone call and called Mujakkir and he came there. Subsequently,

when people inquired with her, she disclosed that she was forcibly brought by Rasool and her statement was recorded, followed by statement under Section 164 Cr.P.C. Therefore apparently, allegations are against applicant Rasool. As regards applicant Mujakkir is concerned, no role is ascribed to him and he seems to have arrived at the ST Stand on being called by Rasool.

7. Considering the above, following order is passed.

ORDER

- I. Criminal Application No. 188 of 2024 is dismissed.
- II. Criminal Application No. 4569 of 2023 stands allowed.
- III. The substantive sentence imposed on the applicant Shaikh Mujakkir Hamid Pinjari in Special Case No. 01 of 2020 by the Additional Sessions Judge, Amalner on 13.12.2023 stands suspended till the final hearing and disposal of Criminal Appeal No. 1186 of 2023.
- IV. The applicant be released on P.R. Bond of Rs.15,000/- (Rupees Fifteen Thousand Only) with two solvent sureties in the like amount.
- V. The applicant shall not commit any criminal activity.

- 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 his 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 bail granted to the applicant.
- VIII. Bail before the trial court.

[ABHAY S. WAGHWASE, J.]

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