



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4577 OF 2023
IN
CRIMINAL APPEAL NO.1157 2023

Laxman @ Sagar Sampat Ghodake
Age:25 years, Occ. Agriculture,
R/o. Andoor, Tq. Tuljapur, Dist. Osmanabad ... Applicant

Versus

1. The State of Maharashtra
Through Police Station,
Naldurg, Tq. Tuljapur, Dist. Osmanabad
2. X.Y.Z. ... Respondents

...
Mr. Vivekanand B. Deshmukh, Advocate for Applicant.
Mrs. Ashlesha S. Deshmukh, APP for Respondent No.1.
Mr. Jitendra S. Jain, Advocate for Respondent No.2.
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 21st MARCH, 2024

PRONOUNCED ON : 1st APRIL, 2024

ORDER :

1. Convict, who has preferred Criminal Appeal No.1157 of 2023 against the judgment and order of conviction dated 26.10.2023 passed by learned Special Judge, Osmanabad in Special Case (POCSO) No. 26 of 2021, is praying for suspension of sentence and grant of bail during pendency of appeal.
2. According to learned counsel for applicant, upon trial for offence punishable under sections 363, 366, 376(3), 376(DA),

341 and 342 of Indian Penal Code (IPC) and under the provisions of POCSO Act, applicant was held guilty and is sentenced to suffer imprisonment for 20 years, 3 years and 6 months, respectively, vide judgment and order dated 26.10.2023. According to learned counsel, firstly, evidence clearly shows that there is no cogent and reliable evidence about age of victim. Secondly, victim was not kidnapped by applicant. That, allegations of kidnapping attributed to one Anand that he was also on relevant day at service place. Except evidence of victim, there is no independent evidence. That, complaint is also not lodged promptly. Medical evidence is also not supporting prosecution nor forensic evidence supporting prosecution. Girl has fabricated story to merely involved applicant, who has political background. According to him, judgment and order of conviction has been taken exception to, it being a product of improper appreciation. As according to learned counsel, appeal is filed in 2023 and as same would take pretty long time to be heard and decided, he prays for suspension of sentence and grant of bail during pendency of appeal.

3. Learned APP strongly opposed the application pointing out that, victim is barely 14 years of age. She was kidnapped, confined in the house of accused and twice raped. Victim has returned home late night after she was allowed to go, and

therefore, complaint was lodged in the morning. Victim's evidence inspires confidence. There is medical as well as forensic evidence. Therefore, offence being serious, she prays to dismiss the application.

4. Learned counsel appearing for victim also vehemently opposed the application pointing out that while victim a minor was proceedings towards house of her friend (classmate), she was forcibly taken by friend of the accused to the house of accused applicant. She was confined in the house and accused allegedly raped her twice against her wish. That, victim has categorically deposed to that extent. That, her testimony has remained unshaken and same inspires confidence. There is corroboration from medical witness. Consequently, justifying the conviction, learned counsel prays to reject the prayers.

5. After considering the submissions of both sides and on going through the papers, it seems that, victim who has adduced her evidence in the witness box has given her date of birth as 13.09.2006. Incident with her is reported to have taken place on 27.01.2021. Therefore, apparently she seems to be minor. Visited the evidence of victim at Exh.32, the sum and substance is that, while she was going to her friend's place for handing over a book, she was forcibly taken by one Anand, who was in the company of

accused. According to her, she was taken to the house and confined and later on present applicant against her wish had forcible sexual intercourse. According to her, out of fright she did not inform anyone, but approached police with her mother and gave statement. It seems that, Investigating machinery has got victim examined through PW8 Dr. Akansha Gore, medical expert, who has issued opinion that, she noted history wherein applicant has been named for sexual intercourse in spite of her resistance and refusal. In para 11 of her evidence, she has noticed irregular rupture to hymen with bruising with signs of inflammation. Therefore, medical witness confirms rape. Forensic evidence is reported to be positive. With such quality of evidence, apparently prosecution has established the charges.

6. Considering the above discussion, gravity of the offence and victim to be a minor, this court does not deem it a fit case for granting relief of suspension of sentence as well as bail. Hence, I proceed to pass the following order :-

ORDER

The criminal application stands rejected.

(ABHAY S. WAGHWASE, J.)