

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL INTERIM APPLICATION NO. 912 OF 2024
in
CRIMINAL APPEAL NO. 205 OF 2024

Mahesh Machindra Chafakarande

... Applicant/
Appellant

versus

State of Maharashtra and Anr.

.... Respondents

Mr. Sachin Madhav Bhavar along with Mr. Hrishikesh S. Shinde, Advocate for the Applicant.

Mr. Shrikant Yadav, APP for Respondent No.1-State.

Mr. Nikhil Deepak Patil, Advocate for Respondent No.2(appointed advocate).

CORAM : SHIVKUMAR DIGE, J.

DATE : 25th OCTOBER, 2024.

P.C. :

1. By this application, the applicant is seeking suspension of sentence and bail in Sessions Case No.231 of 2018.

2. The applicant has been convicted for offences punishable under Section 376, 354D and 506 of the the Indian Penal Code 1860 (for short "IPC") and for offences punishable under Sections 4, 7 and 8 of Protection of Children from Sexual Offences Act, 2012 (for short "POCSO"). The applicant is sentenced to suffer Rigorous Imprisonment for seven years for offence punishable under Section 4 of POCSO and liable to pay fine of Rs.5000/-, in default, to suffer further Rigorous

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Imprisonment for 3 months. The applicant is sentenced to suffer Rigorous Imprisonment for three years for offence punishable under Section 8 of POCSO and liable to pay fine of Rs.1000/-, in default, to suffer Rigorous Imprisonment for two months. The applicant is sentenced to suffer Rigorous Imprisonment for two years for offence punishable under Section 506 of IPC and liable to pay fine of Rs.1,000/-, in default, to suffer Rigorous Imprisonment for two months.

3. It is prosecution case that the applicant had friendship with the victim. The applicant called the victim to meet in the premises of ZP School and sexually assaulted her many times. At the time of the incident, the victim was less than 14 year and 6 months old.

4. It is contention of learned counsel for the applicant that there was love affair between the applicant and victim. At the time of the incident, the applicant was 19 year old. The applicant had given two mobile phones to the victim and they used to talk over the phone. The victim never complained about the relationship between her and the applicant. When the father of the victim caught victim and the appellant red-handed then only victim lodged the complaint. During trial, the applicant was on bail. He is behind bar for more than one year, out of seven years sentence. He is the karta of his family. Hence, requested to allow the application.

5. It is the contention of learned APP along with learned counsel for respondent No.2 that applicant sexually assaulted the victim who was 14 year and 6 month old at the time of the incident. The applicant and victim were staying in the same locality. The applicant was aware about the age of the victim. The victim has categorically stated about the sexual assault on her by the applicant. The medical evidence corroborates the evidence of the victim. If the applicant is released on bail, he may abscond. Hence, requested to reject the application.

6. I have heard all learned counsel, perused the impugned judgment and order and depositions of the witness produced on record.

7. It appears from the evidence of the victim that the applicant had given her two mobile phones and they used to talk with each other over the phone. The first physical relationship between the applicant and victim was in the year 2016 and thereafter, it appears that there were physical relations between applicant and victim. The complaint was lodged against the applicant in the year 2017. It appears that there was love relationship between the applicant and the victim. The applicant was on bail during the trial. He had not misused the liberty. The applicant is behind bar for more than one year. He is the Karta of his family. It may take time to dispose of the appeal. Considering these facts, I am inclined to allow the application.

8. In view of above, the applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of the appeal, on the following terms and conditions :-

ORDER

i) The applicant be enlarged on bail on furnishing P.R.Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;

9 Interim Application is allowed in the aforesaid terms and is accordingly disposed of.

10. All concerned to act on the authenticated copy of this order.

(SHIVKUMAR DIGE, J.)