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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 181 OF 2023
WITH
INTERIM APPLICATION NO. 1013 OF 2023
WITH
INTERIM APPLICATION NO. 1012 OF 2023

Lakhan Sudhakar Devkule ... Appellant/
Applicant

versus

The State of Maharashtra and Anr. Respondents

Mr. Rajaram V. Bansode for the Appellant/Applicant.

Mr. Prashant P. Jadhav, APP for the State.

Mr. Veerdhawal Deshmukh for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 11th OCTOBER, 2024.

P.C. :

1. By this application applicant is seeking suspension of sentence and bail in Crime No. 195 of 2017 and Special Case No. 07 of 2018. The applicant has been convicted under Sections 376(3), 376(2)(n) of Indian Penal Code (for short "IPC") and under Section 6 of Protection of Children from Sexual Offences Act and sentenced to suffer rigorous imprisonment for ten years and to pay a fine of Rs.20,000/- in default to suffer further rigorous imprisonment of one year.

2. It is prosecution's case that victim is a daughter of complainant. At the time of incident her age was 14 years and 9 months. On 26th July 2007 at about 10.00 p.m., victim was kidnapped from her house. Hence, case was filed against the unknown person by her father. In investigation

Police apprehended the applicant alongwith the victim.

3. It is alleged that there was love affair between applicant and victim. The Police recorded the statement of victim. She stated that she had gone with the applicant and applicant sexually assaulted her. It is alleged that prior to the incident of kidnapping, applicant sexually assaulted the victim.

4. It is contention of learned counsel for the applicant that there was love affair between the applicant and victim. The trial Court has acquitted the applicant from charges of kidnapping. The victim herself eloped with the applicant. Learned counsel further submitted that though there are allegations against the applicant that he kidnapped the victim, but there are no allegations against the applicant that during said period he sexually assaulted the victim. Victim in her evidence before the Special Court has not stated that during that period, the applicant sexually assaulted her. The alleged incident was one month prior of the incident of kidnapping. During trial, applicant was on bail, he has not misused liberty. It may take time to conclude the trial. The applicant is the only Karta member of his family and the applicant is behind bar for more than 22 months. Hence, requested to allow the application.

5. It is contention of learned APP alongwith learned counsel for respondent No.2 that at the time of incident victim was 14 years and 9 months old. The applicant was aware that she was minor inspite of that

the applicant kidnapped her and sexually assaulted her on multiple occasions. Learned APP further submitted that the victim has stated that applicant had taken away her in his rickshaw at various places. The charges levelled against the applicant have been proved through evidence and applicant has been convicted.

6. Learned APP further submitted that in cross-examination of the victim by learned counsel for the applicant, it has come on record that there were physical relationship between the applicant and victim for 4-5 times. The medical evidence supports the prosecution case. Considering these facts, both learned counsels requested to reject the application.

7. Learned counsel for respondent No.2 has relied on Criminal Appeal No. 1451 of 2024.

8. I have heard all learned counsels. Perused impugned judgment and order and evidence produced on record.

9. There were allegations against the applicant that he had kidnapped the victim, but he has been acquitted from the said charges by the trial Court. The prosecution has not challenged the said order.

10. From the evidence, it appears that after the alleged incident of kidnapping, no sexual assault was done on victim. As per the prosecution case, the alleged sexual assault was done prior to one month of incident of kidnapping. The victim in medical examination has stated before the doctor, while giving the history of sexual assault that she was sexually

assaulted prior to one month of the incident.

11. Considering these facts as well as applicant is behind bar for more than 22 months. During the trial, he was on bail and he has not misused liberty. It may take time to dispose of the appeal. Hence, I am inclined to allow the application. I have gone through the case law cited by learned counsel for the respondent No.2. The facts of cited case and case at hand are different. In the present case, victim has stated that there was no sexual assault by the applicant when she was kidnapped. 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;

(II) The applicant shall not contact the victim or her family members.

12. The Interim Applications are allowed in the aforesaid terms and are accordingly disposed of.

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

(SHIVKUMAR DIGE, J.)