

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 2412 OF 2024
IN
CRIMINAL APPEAL NO. 304 OF 2024

Digitally
signed by
MANGALTAI
JAYWANT
JADHAV
Date:
2024.10.18
15:17:57
+0530

Sandip Tanaji Deshmukh ... Applicant
versus
The State of Maharashtra and Anr. Respondents

Mr. Amit Mane for the Applicant.
Mr. Swapnil Walve, APP for the State.
Ms. Gayatri A. Takalkar 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 release the applicant on bail till final disposal of appeal filed against judgment and order passed by the learned Special Court, Satara in connection of POCSO Special Case No. 56 of 2017. Whereby applicant is convicted under Section 376(2)(n) and 506 of the Indian Penal Code and under Section 4 of the Protection of Children from Sexual Offences Act.
2. By order dated 15th November, 2021, applicant has been sentenced to suffer rigorous imprisonment for ten years and fine of Rs.10,000/- and simple imprisonment for two months in default of paying the fine.
3. It is prosecution's case that appellant and victim had

acquaintance as they were staying in neighbourhood. It is alleged that applicant, on the pretext of marriage, allured the victim and committed sexual assault on her for 2-3 times at various places. The victim missed her menstrual cycle, therefore she informed the said fact to her grand mother Jagabai (PW-2). The PW-2 gave her two tablets but it goes in vain. On 28th July, 2017, the victim got abdomen pain and on the same day she delivered a baby boy with the help of neighbour (PW-3) at her residential home. After receival of information regarding delivery of child, the applicant approached the victim and threatened her.

4. It is prosecution's case that on 1st August, 2017, the Tehasildar and other people in vicinity alongwith social worker approached victim in her house and made inquiry about the incidence, thereafter the victim narrated the incident and told that applicant sexually assaulted her. Thereafter, on the complaint, offence was registered against the applicant and he has been convicted as referred above.

5. It is contention of learned counsel for the applicant that age of the victim was not proved before the trial Court whether she was below 18 years of age or not at the time of incident. Learned counsel further submitted that the offence was registered after several months of the incident against the applicant. The DNA report of the baby boy of the victim does not match with the DNA of the applicant, but these facts are not considered by the learned Special Court. Learned counsel further submitted that during trial applicant was on bail and he has not misused

liberty. Applicant is behind bar for more than 5 years and 7 months out of 10 years. He is Karta of his family. Hence, requested to allow the application.

6. It is contention of learned APP alongwith learned counsel for respondent No.2 that the applicant sexually assaulted the victim, who was minor at the time of incident. Applicant was aware that she was minor. Learned counsel further submitted that to prove the age of victim the prosecution has examined the Headmaster of school, where victim studied. It has come in the evidence of victim that the applicant had sexually assaulted her. Due to said sexual assault, she has delivered a baby boy. If the applicant released on bail, he may abscond. Hence, requested to rejected application.

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

8. During the trial, applicant was on bail. He has not misused liberty. The total undergone sentence by the applicant is more than 5 years 7 months out of 10 years. The DNA of baby boy delivered by the victim does not match with the applicant. Applicant 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. 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 more sureties in the like amount;

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

9. The 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.)