

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.951 OF-2020

IN

CRIMINAL APPEAL NO.306 OF 2020

Saibaj Noormohammad Shaikh : Applicant/Appellant

Vs.

The State of Maharashtra & Anr. : Respondents

Adv. Moinuddin Khan, for the Applicant/Appellant.

Mrs. M. R. Tidke, APP for the State.

Adv. Pushpa Ganediwala a/w Adv. Arwa Lunawadawala, Adv. Ankit B. Rathod & Adv. Anshu Agarwal, for the Respondent No.2 (Through V.C.).

CORAM : KISHORE C. SANT, J.

DATE : 14TH MARCH, 2024

P.C. :

1. Heard the parties.

2. This Application is for suspension of sentence and release of the Applicant on bail. The Applicant is convicted for the offence punishable under Sections 376(d), 354 of the Indian Penal Code and punishable under Section 4 of the POCSO, Act. He is sentenced to suffer 20 years imprisonment and to fine of Rs.10,000/- and in default to suffer simple imprisonment for Six months. For the offence punishable under Section 4 of the POCSO, Act. He is sentenced to suffer 10 years rigorous imprisonment and to fine of Rs.2,500/- and in default to suffer Simple Imprisonment for 1 month.

3. It is vehemently argued that the age of the present Applicant was only 13 years at the time of incident. Though this defence was not prepared in the trial, now her document is produced in the Appeal as the relatives could not get the certificate which is now sought to be proved in the Appeal. It is submitted that the date of birth of the Applicant is 01/01/2002. School Leaving Certificate is now produced on record. He further submits that even in the ossification test of the accused the age given is 18-19 years. He further submits that there is no sufficient medical evidence to corroborate the evidence of the victim. It is his further case that the Applicant is falsely implicated in the offence. The Applicant thus prays for suspension of sentence and release on bail.

4. Learned Advocate for the Respondent No.2 vehemently opposed the Application. She submits that it has come on record that the Applicant was working as a guide. At any rate victim could not have been of the age of 13 years, as per the certificate now sought to be proved in the Appeal. She further submits that there is medical evidence which corroborates the evidence of the prosecutrix. The doctor who is examined as PW-7 has deposed that the finding on the examination of the victim shows that victim has suffered sexual assaults. He also found injuries of fresh abrasion on her back. On the internal examination hymen injury was

found present. After receipt of Forensic Science Report, she gave her opinion that injuries suggest sexual assault. She thus submits that when the corroborative medical evidence and when the age of victim is not disputed who was only on twelve years of the age at the time of incident took place. No case is made out for grant of bail.

5. Learned APP submits that no perversity is shown in the judgment of the Trial Court. Under such circumstances no bail be granted to the Applicant.

6. At this stage, prima facie reading the evidence of the prosecutrix and PW-7, this Court finds that the conviction is based on evidence. No case is made out pointing out perversity in the judgment of the Trial Court. Though it is tried to argue that the Applicant has by now put in 9 years, 4 months & 20 days. This Court feels that by itself is not the criteria for suspension of sentence. This Court finds no merit in Application.

7. The Application deserves to be dismissed and is disposed of.

8. The Applicant is at liberty to move this Court for fixing early date of hearing of the Appeal.

(KISHORE C. SANT, J.)