

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.841 OF 2024
IN
CRIMINAL APPEAL NO.180 OF 2024

Sadaru @ Sadaruddin Asif Kazi Applicant

V/s.

The State of Maharashtra & Anr. Respondents

Mr.Azimuddin Kazi a/w Mr.Rizwan Khan, Mr.Somesh Gandhi,
Mr.Kaniz Fatima Mukadam i/b N.N. Kazi & Associates, for the
Applicant.

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

Ms.Deepti Chand, for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 09th OCTOBER 2024

P.C:-

. By this Application, the Applicant is seeking
suspension of sentence imposed by Additional Sessions Judge,
Thane in Special Case No.28 of 2016 and release of Applicant on
bail till final hearing and disposal of the Appeal.

2. It is contention of the learned counsel for the
Applicant that, the Applicant came to be prosecuted in CR
No.264 of 2015 and convicted for the offences punishable under

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Section 376(2)(i), 506 of the Indian Penal Code, 1860 ('IPC' for short) and under Section 4 of the Protection of Children From Sexual Offences Act, 2012 ('POCSO' for short), vide judgment and order dated 20th December 2023.

3. The learned counsel further submitted that, the Applicant has sentenced under Section 376(2)(i) to undergo rigorous imprisonment for 10 years and fine of Rs.1,000/- and under Section 4 of the POCSO Act, no separate sentence is awarded. The learned counsel further submitted that, the Applicant has undergone near about 1 year sentence out of the total sentence. He is behind bar more than 10 months. The learned counsel further submitted that, there is delay of 2 months in lodging the complaint. Allegations against the Applicant are that, he called the victim in his house, spiked her water. After drinking that water victim became unconscious. After gaining conscious she asked the Applicant where is her burkha, he replied that she herself removed it and kept aside. When she went to home she found bleeding from her private part. Thereafter, Applicant threatened her that he had video-graphed the act done

by Applicant and he will viral it if she didn't meet him. The learned counsel further submitted that, to prove its case prosecution has examined Medical Officer who has examined the victim, in his evidence it has come on record that hymen of the victim was intact. The medical report is not in the prescribed form. The learned counsel further submitted that, it may take time to decide the Appeal. The Applicant was on bail during the trial, he did not misused the liberty nor he threatened victim or prosecution witnesses. Considering these facts Application be allowed.

4. It is contention of the learned APP along with learned counsel for the Respondent No.2 that at the time of the incident victim was of 14 years old. The Applicant stays in neighborhood of the victim. He called the victim to his house on the pretext that his mother is calling her, when victim went inside his house, he closed the door, the victim was asking whereabouts of the mother of the Applicant, but he told her that, she is in washroom. Thereafter, Applicant gave her spiked water, after consumption of that water, victim became unconscious. When

she was unconscious, the Applicant sexually assaulted her. When victim got up she found her legin was loosen and her burkha was not there. She inquired with the Applicant, thereafter, victim went to home where she found bleeding from her private part. Due to fear she did not disclosed the incident to any one, thereafter, Applicant met the victim and told her and that he has done shooting of the incident. If she did not meet him he will viral that video.

5. The learned APP further submitted that, medical evidence supports the prosecution case that, she was subjected to sexual assault, though there is two months delay in lodging the complaint but the Trial Court has considered evidence on record and on that basis, conviction has been awarded to the Applicant. If Applicant released on bail, he may abscond and hearing of the Appeal may be delayed. The Applicant is history sheeter. As the Applicant has committed heinous offence against the minor girl. He is not entitled for bail and requested to reject the Application.

6. The learned counsel for Respondent No.2 adopted the submissions made by the learned APP.

7. I have heard all learned counsel. Perused impugned judgment and order passed by the learned Special Judge.

8. There is two months delay in lodging the complaint against the Applicant, it appears from record that after eight days of alleged incident the victim had narrated incident to her mother but her mother did not tell this fact to anyone. As per prosecutions case, the Applicant had given spiked water to the victim, after drinking she become unconscious and thereafter she sexually assaulted by the Applicant. From the evidence of PW-5-Dr.Kalpana Vinayak Male, it appears that, hymen of the victim was intact. The Applicant was on bail during the trial. He has not misused liberty. The Applicant is behind bar more than 10 months. It may take time to decide the Appeal finally.

9. In the above circumstances, the sentence awarded to the Applicant is suspended and he is enlarged on bail, pending the hearing and final disposal of the appeal, on the following conditions:

- (i) The Applicant-Sadaru @ Sadaruddin Asif Kazi be enlarged on bail on executing PR.Bond in the

sum of Rs.25,000/- with one or two sureties in the like amount.

10. The Interim Application is allowed in the aforesaid terms and is accordingly disposed.

11. The fees of the learned counsel for Respondent No.2 be given as per Rules.

(SHIVKUMAR DIGE, J.)