IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 1055 OF 2024

IN

CRIMINAL APPEAL NO. 1315 OF 2023

Abdulgani Ibrahim Patel	…	Applicant/ Appellant
versus		
State of Maharashtra and Anr.	….	Respondents

Mr. Pawan Mali, Advocate for the Applicant.
Mr. Swapnil Walve, APP for the State/Respondent No.1.
Mr. Tanmay R. Vispute appointed Advocate from Legal Aid- Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 23rd OCTOBER, 2024.

P.C. :

1. By this application, applicant is seeking suspension of sentence and grant of bail in Specail POCSO Case No. 48 of 2018. The Applicant has been convicted under section 376 (2) (n) (f), 506 of Indian Penal Code (for short 'IPC') read with Section 6 of The Protection of Children from Sexual Offences Act (for short 'POCSO Act'). The punishment for the offence under section 6 of POCSO Act is same for the offence under Section 376(2) (f) (n) of IPC. Hence he is sentenced to suffer RI for twenty years and to pay fine of Rs.5,000/-, in default, to suffer R.I. for six months.

2. It is prosecution's case that at the time of incident, the victim was 13 years and 6 months old and she was repeatedly sexually assaulted by the applicant. Due to sexual assault, she was pregnant. When her mother came to know about her pregnancy, she enquired with her. Initially, victim told her mother that she was sexually assaulted by unknown person. Later on, her inquiry was made by the police officer, in the said inquiry she told the name of applicant, who is real brother of the victim. The DNA of foetus of the victim matches with the applicant. After trial applicant was convicted.

3. It is contention of learned counsel for the Applicant that first informant and the victim have not supported the prosecution case during trial. They retracted their statements given before the police. Learned counsel further submitted that earlier victim did not disclose the name of the applicant. Later on she named the applicant. Learned counsel further submitted that though prosecution is relying on DNA report, but the question was not asked to the applicant under section 313 of Cr.P.C. It is settled law that if incriminating evidence is there against the applicant, it must be asked to the applicant under section 313 of Cr.P.C. Applicant is behind bar more than six and half years. He is student. It may take time to dispose of the appeal. If he remained behind bar, his life will be ruined. Hence, requested to all the application.

4. It is contention of learned APP along with learned counsel for

Respondent No.2 that applicant has sexually assaulted his real sister who was 13 years and 6 months old. Applicant was was major at the time of incident and he was aware about the age of his sister. Due to sexual assault, victim got pregnant. Due to fear of applicant, the victim initially did not tell name of the applicant. The DNA of foetus of victim girl matches with the DNA of applicant. It proves the sexual assault was done by the applicant on the victim. Not asking the question under section 313 of Cr.P.C. cannot be a ground to grant bail to the applicant as total sentence imposed on the applicant is of 20 years. Hence requested to reject the application.

5. I have heard all the learned counsel. Perused impugned judgment and order and evidence produced on record. The first informant, who is mother of the victim and victim turned hostile before the Special Court and they retracted from the statements given before the police. While lodging the complaint, initially the victim had told the name of unknown person has sexually assaulted but during enquiry, the name of the applicant revealed. The evidence against the applicant is that the DNA of the foetus matches with the DNA of the Applicant. But about the DNA report, no question was asked to the applicant under Section 313 of Cr.P.C. The evidential value of not asking the question regarding the incriminating material against applicant will be the point of argument at the time of final decision of the appeal.

6. Applicant is behind bar more than six years. Applicant is the Karta of his family. At the time of incident, he was 21 years old. It may take time to dispose of the appeal.

7. Considering these facts, I am inclined to allow the application by suspending the sentence and enlarging him on bail, pending the hearing and final disposal of the appeal on the following terms and conditions. Hence, I pass following order:

(a) Applicant Abdulgani Ibrahim Patel 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.

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

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

(SHIVKUMAR DIGE, J.)