

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL INTERIM APPLICATION NO. 2161 OF 2024****IN****CRIMINAL APPEAL NO. 569 OF 2024**

Digambar Alias Rakesh Gopal Nalawade

... Applicant

Versus

State of Maharashtra and Anr.

... Respondents

.....

Advocate A.R.Shaikh, Advocate for the Applicant.

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

CORAM : SHIVKUMAR DIGE, J.**DATED : 17th OCTOBER, 2024.****P.C. :**

1. By this application, applicant is seeking suspension of sentence and bail in POCSO Special Case No. 313 of 2017. The Special Judge, Borivali Division at Dindoshi, Mumbai has convicted the applicant under Section 376(2) of Indian Penal Code (for short “**I.P.C.**”) and sentenced to suffer rigorous imprisonment for the period of 10 years and to pay fine of Rs.2,000/- in default to suffer simple imprisonment for one month. No separate punishment under Section 4 and 8 of Protection of Children from Sexual Offences Act, 2012 (for short “**POCSO Act**”) is awarded in view of Section 42 of the POCSO Act.

2. It is prosecution’s case that there was acquittance between the applicant and victim. Due to family issue victim left her room, she called

the applicant. The applicant called her at Pune. After leaving home she stayed at various railway stations for 10 days. Thereafter, she called the applicant. Applicant told her to go back to her house. Thereafter she went to meet applicant. Applicant took her at his sister's house. It is alleged that there he sexually assaulted her. On next day applicant and his uncle informed the police about the victim. On the same day Dahisar police station registered offence under Section 366 of I.P.C. In investigation they arrested the applicant. In enquiry victim disclosed to the police that applicant sexually assaulted her. After trial applicant has been convicted as referred above.

3. It is contention of learned counsel for the applicant that victim herself had come to the house of applicant. She stayed for 10 days at various railway stations. Her mother had not given her any amount in spite of that she survived. No complaint was lodged by the mother of the victim. Victim alleges that applicant only once sexually assaulted her but it is false as medical evidence does not corroborates the evidence of victim as at the time of medical examination of victim her menstrual period was going on. But these facts are not considered by the trial Court. Learned counsel further submitted that applicant is behind bar more than 7 years out of 10 years sentence. He is karta of his family. It may take time to dispose of the appeal, hence requested to allow the application.

4. It is contention of learned APP and learned counsel for respondent No.2 that at the time of incident victim was 13 years 10 months old. Applicant called her at his house. He took her to his sister's house and sexually assaulted her. The charges against the applicant have been proved. Accordingly he has been convicted. If applicant released on bail he may abscond and requested to reject the application.

5. I have heard all learned counsel and perused impugned Judgment and Order and evidence produced on record. After leaving home victim stayed at various railway stations for 10 days. No complaint was filed by her mother. Thereafter applicant told her to return to her home in spite of that she met the applicant. The allegations against the applicant that he sexually assaulted her. At the time of medical examination of victim her menstrual period was going on. This fact is admitted by the Medical Officer in his evidence. Applicant is behind bar more than 7 years. He is karta of his family. It may take time to dispose of the appeal. Considering these facts, I am inclined to allow the application.

6. In view of above, 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;

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

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

(SHIVKUMAR DIGE, J.)

SONALI
SATISH
KILAJE

Digitally signed
by SONALI
SATISH KILAJE
Date:
2024.10.19
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