

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL - NO. 4495 OF 2024
(@ Special Leave Petition (Crl.) No. 13890/2024)

SAIBAJ NOORMOHAMMAD SHAIKH

... APPELLANT (S)

VERSUS

24092287

STATE OF MAHARASHTRA & ANR.

... RESPONDENT (S)

O R D E R

Leave granted.

- Certified to be true copy
Assistant Registrar (Judicial)
20/10/2024
Supreme Court of India

By order dated 14.10.2024, Shri Sanjay Hegde, learned senior counsel was requested to appear as Amicus Curiae for respondent no.2/victim along with Shri Mukund P. Unny, learned Advocate-on-Record (AOR) as instructing counsel in the matter.

We have heard Shri Karl Rustomkhan, learned counsel for the appellant, Shri Prastut Mahesh Dalvi, learned counsel for the respondent/State and Shri Sanjay Hegde, learned senior counsel/Amicus Curiae along with Shri Mukund P. Unny, learned counsel for respondent no.2/victim and perused the material on record.

Being aggrieved by dismissal of the Interim Application No.951/2020 in Criminal Appeal No.306/2020 on 14.03.2024 by the Bombay High Court under Section 389 of the Code of Criminal Procedure of India, 1973 (CrPC) seeking suspension of sentence and grant of bail, the appellant is before this Court.

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Briefly stated, the facts are that the appellant was convicted for the offences punishable under Sections 376-D, 354 of the Indian Penal Code (IPC) and Section 4 of the Protection of Children from Sexual Offences Act ('POCSO Act' for short) and sentenced to suffer twenty years imprisonment with fine of Rs.10,000/- and in default, to undergo simple imprisonment for six months. For the offence punishable under Section 4 of the POCSO Act, the appellant was sentenced to undergo ten years' rigorous imprisonment and fine of Rs.2,500/- and in default, to undergo simple imprisonment for one month.

Being aggrieved by the conviction and sentence imposed, the appellant has preferred Criminal Appeal No.306/2020 before the High Court. In the said appeal, Interim Application No.951/2020 was filed seeking suspension of sentence and bail. By impugned order dated 14.03.2024, the said application has been dismissed. Hence, this appeal.

During the course of submission, learned counsel for the appellant contended that no doubt the Sessions Court has convicted the appellant and has imposed the sentences, as referred to above; that the appellant has already undergone nine years and seven months of actual sentence and ten years and seven months of sentence with remission; that 50% of the

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sentence has already been undergone by the appellant herein. He has a good case on merits. The appeal before the High Court is of the year 2020 and obviously the High Court would give priority to older appeals. The appellant would have to therefore wait for his appeal being heard. Since, he has already completed 50% of the sentence, this Court may grant the relief of suspension of sentence and bail to the appellant herein as the appellant has a good case on merits. He further submitted that the co-accused has been granted relief of suspension of sentence and bail by the High Court. Hence, he prayed for setting aside the impugned order.

Per contra, learned counsel for the respondent(s)/State submitted that this is not a case where the appellant ought to be granted any relief having regard to the offences for which he has been convicted by the Sessions Court and bearing in mind the victim, who is aged only about 13 years and her vulnerability having been taken advantage of by the appellant and the co-accused, there is also no merit in the appeal filed by the appellant before the High Court. Hence, this appeal may be dismissed.

Shri Sanjay Hegde, learned senior counsel/Amicus Curiae also submitted that there is no merit in this appeal and hence the same may be dismissed.

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However, he also brought to our notice the fact that in this case the Sessions Court has not ordered for grant of victim compensation under Section 357-A of the CrPC (Section 396 of the Bharatiya Nagarik Suraksha Sanhita, 2023) or under the POCSO Act and Rules made thereunder; that in the absence of such a direction being issued by the Sessions Court which convicted the perpetrators, compensation would not be paid to the victim. In this regard, learned Amicus drew our attention to the scheme as contemplated under Section 357-A of the CrPC and submitted that such a scheme is in vogue in every State but hardly being implemented in its true letter and spirit; that in the State of Maharashtra "Manodhairya Scheme" for rape victims, children who are victims of sexual offences and acid attack (women and children) is in operation but it is not known whether in the instant case, the second respondent/victim has been given any benefit under the said Scheme. He also submitted that under Section 357-B of the CrPC, the compensation is in addition to fine under Section 376-D of the IPC and there is also provision for treatment of victims etc. but the same is not being implemented in its true letter and spirit. Learned Amicus therefore, submitted that appropriate directions may be issued not only for the purpose of present case insofar as respondent no.2 is concerned but

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this Court may enlarge the direction so as to be applicable to all the Courts in the country particularly when the victim is a minor or a woman.

We have considered the submissions advanced at the Bar. We find that in the first place, the appeal is filed by the appellant herein before the High Court, which is of the year 2020. Obviously, older appeals would be heard prior to this appeal being considered. We also notice that the co-accused has been released on bail by the High Court. Further, the appellant has already completed a little more than half the sentence imposed by the Sessions Court. There is no likelihood of the sentence being enhanced as such by the High Court. In the circumstances, we find that the appellant is entitled to suspension of sentence and release on bail.

We, therefore, direct that the appellant be produced before the concerned Sessions Court as early as possible and the Sessions Court shall release him on bail, subject to such conditions as it may deem appropriate to impose.

However, it is directed that the grant of relief to the appellant herein would not result in procrastinating the hearing of his appeal by the High Court.

As far as the other submissions of learned Amicus Curiae are concerned, we note that Section 357-A specifically speaks

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of victim compensation scheme and under the said provision, it is noted that direction for payment of victim compensation is to be implemented by the District Legal Services Authority or the State Legal Services Authority, as the case may be, and the compensation has to be released to the victim as early as permissible.

On a reading of the order and judgment of the Trial Court, which has convicted the appellant herein for the offence, *inter alia*, under Section 376-D of the IPC except imposing the fine of Rs.12,500/- (Rs.10,000/- + Rs.2,500/-), we find that no direction for payment of victim compensation to the second respondent/victim has been ordered. Such a lapse on the part of Sessions Court would only delay payment of any compensation under Section 357-A of the CrPC.

In the circumstances, we direct that a Sessions Court, which adjudicates a case concerning the bodily injuries such as sexual assault etc. particularly on minor children and women shall order for victim compensation to be paid having regard to the facts and circumstances of the case and based on the evidence on record, while passing the judgment either convicting or acquitting the accused. Secondly, the said direction must be implemented by the District Legal Services Authority or State Legal Services Authority, as the case may

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be, in letter and spirit and in the quickest manner and to ensure that the victim is paid the compensation at the earliest.

There can also be a direction for payment of interim compensation which could be made by the Sessions Court depending upon the facts of each case.

For the purpose of implementing the said provision in letter and spirit we direct that a copy of this order be circulated by the Registry of this Court to all the High Courts addressed to the Registrar Generals of the High Courts, who are requested to transmit the said order to all the Principal District Judges in all the Districts of the respective States and for onward transmission to the Sessions Judges dealing with such matters, who are under an obligation to order for victim compensation in an appropriate case.

In the facts and circumstances of the present case, the second respondent shall also be entitled to be considered for compensation under Rule 7 of the POCSO Rules, 2012 and now under Rule 9 of the POCSO Rules, 2020.

Insofar as the present case is concerned, since the Sessions Judge has not awarded any victim compensation to the second respondent, we request the High Court to consider the case for the purpose of awarding of the said compensation,

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which shall be interim in nature, at the earliest.

Before parting, we record our sincere appreciation of the assistance rendered by Shri Sanjay Hegde, learned senior counsel/Amicus Curiae along with Shri Mukund P. Unny, learned Advocate-on-Record as instructing counsel in the matter and particularly for advancing arguments on the payment of the victim compensation to the victims of crime under Section 357-A of the CrPC.

With these observations, the appeal is allowed and disposed of.

.....J.
[B.V. NAGARATHNA]

.....J.
[PANKAJ MITHAL]

NEW DELHI
NOVEMBER 04, 2024