

(2022) 07 AFT CK 0006
In the Armed Forces Tribunal
Case No : OA (Appeal) 466 Of 2022

Signalman Sinde Mohan Kalu

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

Date of Decision : 13-07-2022

Acts Referred:

Army Act, 1950 — Section 69
Armed Forces Tribunal Act 2007 — Section 15
Protection of Children from Sexual Offences Act, 2012 — Section 10, 29, 30, 33
Protection of Children from Sexual Offences Rules, 2020 — Rule 4(15)
Code of Criminal Procedure, 1973 — Section 389

Citation : (2022) 07 AFT CK 0006

Hon'ble Judges : Rajendra Menon, Chairperson; P. M. Hariz, Member (A)

Bench : Division Bench

Advocate : Astha Sharma, Sanjeev Kaushik, Waize Ali Noor

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties on the application for suspension of sentence/bail. Applicant herein was put to trial before the Court-Martial. He was working as a Signalman at the Headquarters, 44 Mountain Brigade Signal Company which at the relevant time was attached with 15th Battalion of the Assam Regiment. He was put to trial for having committed an offence under Section 69 of the Army Act, 1950 read with Section 10 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as "POCSO Act"), i.e. committing Civil Offence in the matter of Sexual Assault on a girl 6 years of age on 30.11.2020 around 13:30 hours. This being an offence under Section 10 of the POCSO Act, he was put to trial. It was found that he had touched the body of the child around her chest by putting his hand inside her dress, kissed her at multiple places, many times in her cheek and finding the offence to be established, he had been convicted to undergo imprisonment for 5 years and dismissed from service.

2. Challenging the conviction, the appeal has been filed which is admitted for

hearing and today, we have heard learned counsel for the parties at length on the question of grant of bail to the applicant.

3. Learned counsel for the applicant argued that in this case, the findings of the Court Martial is vitiated as it is without any legal evidence being available on record, filled with various lacunas and the entire proceedings of the trial stands vitiated for non-observance of the principles of fair trial and non-appreciation of the evidence properly.

4. It was argued that the entire case of the prosecution is based on the stand-alone statement of the prosecutrix who was examined as PW-9. This statement was recorded prior to commencement of the SGCM, i.e. at the Summary of Evidence stage, and not immediately after the offence was committed, it was for the first time recorded at the summary of evidence stage. However, the statement was not signed by the prosecutrix as mandated in the procedure prescribed under POCSO Act. Prior to this, it was only circulated by way of statement made by her father and mother.

5. Certain lacunas in the statement of the mother of the prosecutrix were pointed out to say that they are all afterthought and cannot be admitted in evidence. It was tried to be emphasised that the prosecutrix's father being a Senior Officer and the applicant being an employee working under him, the witnesses were influenced by the father of the prosecutrix, he had been in touch with them and their statements are vitiated having being at his instigation. It was further argued that in this case no medical examination of the prosecutrix was undertaken and in the absence of there being a mandatory medical examination which is the requirement of the POCSO Act, the entire trial stands to be vitiated.

6. Statement of prosecutrix was not recorded within 30 days on occurrence of the incident as mandated under Section 33 and no special reason has been indicated for the delay in recording her statement. This according to the learned counsel for the applicant vitiates the entire trial. Referring to the evidence of the father, challenge is made to the same, by contesting that it is fabricated and only made to implicate the applicant. Further referring to statement of witnesses, it is argued that the evidence on record has not been properly examined, is perverse and, therefore, the entire trial stands vitiated for non-observance of statutory provisions and the breach of procedural aspects of the matter.

7. Learned counsel for the respondents refuted the aforesaid and argued that in this case as required under the provisions of sub-rule (15) of Rule 4 of the POCSO Rules 2020, this court has issued notice to the parents of the prosecutrix. The notice has been served on the parents and the Counsel for the respondents represents the complainant/parents in the matter. He took us through the law laid down by the Hon'ble Supreme Court in the case of Preet Pal Singh versus The State of Uttar Pradesh and Ors. 2020 (8) SCC 645 Paras 36 & 39 to argue that the law with regard to pre-trial arrest and bail and grant of bail post-conviction is well settled, it is argued that in a matter pertaining to grant of bail,

post-conviction, the Appellate Court is only required to examine as to whether there are any patent infirmity in the order of conviction with reference to the order of conviction, prima facie, erroneous or unsustainable in nature warranting interference.

8. Strong and compelling reasons are required to be recorded for grant of bail in a proceeding under Section 389 of the CRPC and the same principle will apply in this appeal also under Section 15 of the Armed Forces Tribunal Act also. Learned counsel took us through the orders passed by the learned court below and by referring to various justifications given for conviction, emphasised that reporting of incident was done immediately when the mother and the father of the prosecutrix came to know about happening of the incident. He took us through Para 9 of the impugned judgment of conviction to say that there is no delay in reporting the matter to the authorities concerned.

9. Thereafter, learned counsel took us through the analysis of the statement of various witnesses undertaken by the court below, particularly, Paras 6, 8 (a) (b) (c) (d), 11, 12 and 16 to say that happening of the incident as narrated by the prosecutrix is fully established from the evidence on record, the statement of prosecutrix is fully collaborated from the statement of other supporting witnesses.

10. Learned counsel argued that after analysing the statement of the prosecutrix, the learned court below in Para 12 & 13 has indicated why the statement of the prosecutrix inspires confidence and the offence established. The court has recorded a categorical statement that the girl child is not a tutored witness, she is not stating the incorrect fact but speaking the truth.

11. Learned counsel took us through the mandate of Sections 29 & 30 of the POCSO Act, referred to the judgment of Hon'ble Supreme Court in the case of Attorney General for India and Ors. Versus Satish and Ors. AIR 2022 SC page 13 and the findings recorded by Hon'ble Supreme Court in Para 36 and argued that it has been held by the Hon'ble Supreme Court that section 29 permits the Special Court to draw presumptions when a person is prosecuted for committing or abetting an offence under the POCSO Act.

12. Referring to Para 30, it was argued that this Section permits the Special Court to presume occurrence of an offence under the Act which requires a culpable mental state on the part of the accused to exist and the existence of the mental state to commit the offence on the part of the accused in a presumption drawn under Section 30.

13. By taking us through the Impugned Order discussing the requirement of Section 29 & 30, it was argued that the order of conviction clearly establishes that the appellant has failed to rebut the presumption made by the learned Court against him.

14. Learned Counsel argued that it is the case where a man in the uniform has committed the offence with the small child in the campus of the environment

and, therefore, no case for grant of bail is made out.

15. We have heard Learned Counsel for the parties and have perused the records particularly the findings along with the statement of witnesses available on record and we find that the prosecutrix a child of 6 years has categorically established the case of the prosecution and happening of the events in the Officers Mess of Headquarters 44 Mountain Brigade on 30.11.2020 between around 1300 hour to 1400 hour, the same has been established not only from the statement of the prosecutrix but also other supporting witnesses examined at the trial.

16. The analysis of the statement of witnesses by the Court and the reasons given for accepting it in our considered view is, prima facie, reasonable. At this stage, we need not hold it to be vitiated in any manner whatsoever, except for pointing out certain procedural inpropriety, nothing is brought on record to indicate that the applicant has been falsely implicated or that he has not committed the offence.

17. Bestowing our anxious consideration on the various aspects of the matter after going through the statement of the prosecutrix and the statement of other witnesses available on record particularly that of her parents at this stage, we see no reason to suspend the sentence of conviction or grant bail to the applicant. The application is, therefore, dismissed.