

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1671 OF 2014
WITH
CRIMINAL APPEAL NO. 1008 OF 2014

Dattatraya Punjaram Yadav	...	Applicant
vs.		(Orig. Accd.)
The State of Maharashtra	...	Respondents

Mr. Ritesh Ratnam i/b. Mr. Ganesh K. Gole, Advocate for the applicant
Mr.A.S.Shitole, APP, for the respondent-State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 24th December, 2014.

P.C.

This is an application under Section 389 of the Code of Criminal Procedure, 1973. The applicant herein is convicted for the offence punishable under Section 376 of the Indian Penal Code and under Section 4 of the Protection of Children from Sexual Offences Act, 2012 and is sentenced to suffer R.I. for two years and fine of Rs.2,000/- in default to suffer R.I. for one month in Sessions Case No.68 of 2014 by the Addl. Sessions Judge, Nashik vide judgment and order dated 28.10.2014.

2. The learned APP submits that Section 376 of IPC contemplates a substantive sentence for a period which shall not be less than seven years and may extend to life. Therefore, the learned APP rightly prays that this Court may

issue notice of enhancement.

3. The substantive sentence of the applicant has been stayed by the learned Sessions Court for a limited period to enable him to file an appeal before the High Court.

4. The learned Sessions Judge has assigned special reasons for awarding a sentence less than the minimum contemplated. The learned Sessions Judge has considered the fact that the victim had fallen in love at a very tender age, she got married to the applicant at Alandi, she had left the house on her accord and had refused to disclose anything to her mother. It further appears from the records that the victim girl, who is now the wife of the applicant, is in an advanced stage of pregnancy and is due for delivery in the month of January, 2015.

5. Upon perusal of the substantive evidence of the mother of the victim, more particularly the tenor of her cross-examination which clearly shows that the victim girl, at the threshold, had disclosed to her mother that she had left the house on her own accord by giving false reasons. The victim girl had sufficient understanding and understands the consequences of her own act by distinguishing between good and bad as well as her own interest, it is only after registration of the evidence that the custody of the victim girl was given to the mother. The victim girl has specifically stated in her deposition that the applicant

did not have forceful intercourse with her at any point of time. She had attended the Court with the accused. The police had not read over the statement under Section 161 of Cr.P.C. to her. According to the victim, she is about 19 to 20 years. She has specifically deposed before the Court that she had left the house on her own accord and married the accused.

6. It would not be proper to spoil the married life of the applicant and the victim only because the Court would be constrained to hold it as a statutory rape. Hence, the findings recorded by the learned Sessions Judge do not call for any interference at this stage and this is the time when the victim girl who happens to be the wife of the applicant would need security, protection and support from the applicant. Hence, this Court is inclined to suspend the substantive sentence of the applicant during the pendency of the appeal.

ORDER

- (i) The application is allowed. The substantive sentence imposed upon the applicant is hereby suspended. He be enlarged on same bail, fresh bonds.
- (ii) The applicant shall furnish fresh bond within a period of four weeks from the date of this order, failing which the order granting bail stands cancelled.
- (iii) The applicant shall report to the concerned Sessions Court once in six months on the date specified by the concerned Sessions Court. Upon failure

to attend on two consecutive dates, the concerned Sessions Court shall inform the High Court forthwith and take appropriate action.

Application is disposed of on the above terms.

(SMT.SADHANA S.JADHAV, J.)