

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2699 OF 2015
IN
CRIMINAL APPEAL NO. 433 OF 2015

Prakash s/o Bhaskar Kirtikar,
Age : 23 years, Occu. Agri.,
R/o Fulshivra, Pratappurwadi Shivar,
Tq. Gangapur, Dist. Aurangabad

APPLICANT

VERSUS

The State of Maharashtra

RESPONDENT

Mr. Ambar S. Barlota, Advocate for the applicant
Mr. V.P. Kadam, A.P.P. for the respondent-State

CORAM : M.T. JOSHI, J.

DATE : 08/07/2015

ORAL ORDER :

1. Heard both sides.
2. The present applicant/appellant was convicted by the learned Additional Sessions Judge, Vaijapur, vide judgement and order dated 25th March, 2015, passed in Sessions Case No. 74/2014, for the offence punishable under section 376 of the I.P. Code and was sentenced to suffer rigorous imprisonment for ten years. He was further convicted for the offence punishable under

section 5 (N) read with section 6 of the Protection of Children from Sexual Offences Act and was sentenced to suffer rigorous imprisonment for ten years. Both the sentences were directed to run concurrently. The applicant was also sentenced to pay fine of Rs. 1000/-, for his conviction for each of the offence i.e. the offence punishable under section 376 of the I.P. Code and under section 5 (N) read with section 6 of the Protection of Children from Sexual Offences Act, in default to undergo further rigorous imprisonment for two months. The applicant was acquitted of the offences punishable under section 363, 366A, 376 (I), (N) of the I.P. Code and under sections 5 (L) read with sections 7 and 8 of the Protection of Children from Sexual Offences Act.

3. The reading of the impugned judgement and record would show that according to the prosecution, the victim of the offence was 16 years and four months old at the time of offence. Her statement said to have been recorded by the Investigating Officer at Exhibit-25, which she resiled during the trial, would show that she, on her own, made a phone call to the present

applicant/appellant out of love affair and thereafter went away with the present applicant and resided together for four days at different places.

4. Mr. A.S. Barlota, learned counsel for the applicant/appellant, submits that the present applicant is a young boy of only 23 years old. The age of the prosecutrix is not proved according to law. He, therefore, prayed that the applicant be released on bail by suspending the substantive sentences awarded to him, during pendency of the appeal.

5. Learned A.P.P., on the other hand, opposed the application.

6. Considering all the facts on record, in the background of the case, in my view, the substantive sentences awarded to the present applicant deserve to be suspended and the applicant deserves to be released on bail. Hence, the following order :-

7. The substantive sentences as awarded to the present applicant by the learned Additional Sessions

Judge, Vaijapur, vide judgement and order dated 25th March, 2015, passed in Sessions Case No. 74/2014, are hereby suspended till disposal of Criminal Appeal No. 433/2015 filed by the applicant in this Court.

8. The fine amount, as directed to be paid vide the impugned order, has been paid by the present applicant. The applicant be released on bail on his executing P.R. bond in the sum of Rs. 30,000/- (rupees thirty thousand) and also upon furnishing surety in the like amount.

9. The present application is accordingly allowed and disposed of.

[M.T. JOSHI]
JUDGE

npj/criapln2699-2015