

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.6589 OF 2014
IN
CRIMINAL APPEAL NO.743 OF 2014

Madhav S/o. Shamrao Shinde,
Age : 24 years, Occu.: Driver,
R/o. Pett Pimpalgaon, Tq. Palam,
District Parbhani ..Applicant

Versus

The State of Maharashtra
Through Police Station Officer,
Police Station Palam,
Tq. Palam, Dist. Parbhani ..Respondent

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Mr.E.P.Sawant, advocate i/b. Mr.A.A.Khande,
advocate for applicant

Mr.S.R.Palnitkar, APP for respondent - State

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CORAM : M.T. JOSHI, J.

DATE : JULY 27, 2015

PER COURT :

Heard both sides.

2] Present applicant, who was convicted by
learned Special Judge for the offences punishable

under Section 363, 366, 376 read with 34 of Indian Penal Code and Section 4 of Protection of Children from Sexual Offences Act; and was sentenced to suffer rigorous imprisonment for a period of 9 years for the offence punishable under Section 376 of Indian Penal Code and lesser punishment for other offences, is praying for suspension of substantive sentences and his release on bail.

3] The record would show that the co-accused - Venkati is alleged to have abetted commission of the offence of rape and therefore, he was sentenced to suffer rigorous imprisonment for seven years. He has already been released on bail upon suspension of sentence vide order dated 1st December, 2014 passed in Criminal Application No.6214 of 2014 in Criminal Appeal No.690 of 2014.

4] Learned counsel for the applicant points towards the fact that according to the prosecution, the victim was 16 years of age at the

time of the alleged offence and during cross-examination, she herself deposed that on the day of the incident, she herself made a phone call to the applicant/appellant and asked him to meet her at the specified place and both of them went away and thereafter, the missing complaint was filed by father of the victim. Learned counsel for the applicant submits that learned Special Judge has convicted the applicant as the victim was below 18 years of age at the time of alleged offence.

. He further files on record a photocopy of the death certificate. The same is marked as "X" for identification. It would show that the father of present applicant has died recently. He submits that since last about one year i.e. from the date of the judgment of learned Special Judge, present applicant is behind the bars and in the circumstances, the applicant may be released on bail by suspending the substantive sentence. He submits that the fine amount is already deposited

by the applicant.

5] Learned A.P.P. opposes the application. He submits that learned Special Judge has sentenced the applicant/appellant to undergo rigorous imprisonment for a period of nine years. He submits that since the victim is a minor, the consent is irrelevant and therefore, the application may be rejected.

6] Upon going through the overall facts on record that the present applicant is behind the bars for more than one year and that his father has recently died on 15th January, 2015, in my view, in the background of the case, without making any comment on merit of the case at this stage, the substantive sentences can be suspended and the applicant deserves to be released on bail. Hence, the following order :-

i] The application is allowed.

ii] The substantive sentences awarded by learned Special Judge to the applicant are suspended, during pendency of the Criminal Appeal.

iii] The applicant/appellant be released on bail on his executing P.R. bond in the sum of Rs.30,000/- (Rs. Thirty Thousand) and also upon furnishing surety in the like amount.

7] Application accordingly stands disposed of.

[M.T. JOSHI, J.]

kbp