

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.620 OF 2015
IN
CRIMINAL APPEAL NO.584 OF 2015

Mr. Sandesh Vasant Mohite

..Applicant

Versus

The State of Maharashtra

..Respondent

....

Mr. R.V. Sankpal, for the Applicant.

Mr. A.R. Patil, APP, for the Respondent-State.

....

CORAM : A. R. JOSHI, J.

DATE : 30th JUNE, 2015

P.C.

1. Heard learned Counsel for the applicant. The appeal is already admitted.

2. This is an application for bail during pendency of the appeal. The applicant is convicted for the offences punishable under Sections 363, 366 of IPC and Section 4 of the Protection of Children from Sexual Offences Act. According to the evidence adduced before the trial Court, the prosecutrix girl was below the age of 18 years still considering two different dates brought on record as to her birth. As such, in view of the definition of child mentioned in the Act, the prosecutrix was a child and as such there was material before the trial Court to come to the

conclusion that there was penetrative sexual assault on the child. As such, in fact the offence described under Section 5 of the said Act should have been attracted leading to the punishment mentioned in Section 6 of the said Act which is 10 years minimum. However, in the present case the applicant is charged and convicted for the offence punishable under Section 4 of the Act for which minimum punishment is 7 years and this minimum punishment has been awarded against him. Of course that aspect as to inadequate punishment or otherwise wrong charging can be dealt with appropriately when the appeal will be put to final hearing and if at all State prefers any appeal for enhancement.

3. In any event, considering the material available against the present applicant and considering the offence committed against a child, in the opinion of this Court this is not a case in which the applicant can be released on bail during pendency of the appeal. Hence, application for bail is rejected and disposed of accordingly.

(A. R. JOSHI, J.)