

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPLICATION NO.623 OF 2015  
IN  
CRIMINAL APPEAL NO.589 OF 2015

Vinod Bharat Gaikwad ..Applicant  
*Versus*  
The State of Maharashtra ..Respondent

....  
Mr. B. G. Vaidya, for the Applicant.  
Mrs. P.P. Bhosale, APP, for the State.

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CORAM : A. R. JOSHI, J.

DATE : 30<sup>th</sup> JUNE, 2015

P.C.

1. Heard rival arguments on the application for bail during pendency of appeal. The applicant is convicted for the offence punishable under Section 363 of IPC and sentenced to suffer RI for five years and is also convicted for the offence punishable under Section 366(A) of IPC and sentenced to suffer RI for five years. He is also convicted for the offence punishable under Section 4 of the Protection of Children from Sexual Offences Act and sentenced to suffer RI for 10 years and to pay fine of Rs.10,000/-.

2. During the arguments, learned Counsel for the

applicant stated that various provisions of the Protection of Children from Sexual Offences Act have not been complied and as such the applicant had very good chances of getting success in the appeal. He further stated that the age is on the border line i.e. about 17 years or so when the incident happened in March, 2013. Counter to this, it is brought to the notice of the Court as to the substantive evidence of PW-1 the prosecutrix girl that birth date is 21<sup>st</sup> June, 2000. As such, as on March, 2013 even she has not completed 13 years of age. The definition given in the Protection of Children from Sexual Offences Act for “child” is – the person below the age of 18 years. Apparently the applicant is convicted for the main offence punishable under Section 4 of the said Act which attracts the minimum punishment of seven years which may be extended upto life but considering the factual position and as per the evidence brought before the trial Court the prosecutrix PW-1 was a child and as such the provisions of Section 5 of the said Act could have been applied and in that event the minimum punishment should have been 10 years as the offence described in Section 5 is punishable under Section 6 of the said Act. That is the punishment for aggravated penetrative sexual assault. In any

event while considering this application for bail that aspect is not being gone into detail. That can be done at the time of hearing of the appeal. But the fact still remains that the offence is of serious nature and in fact in no way it can be said that the applicant can be released on bail when under Section 4 of said Act he has been awarded imprisonment for ten years apart from his conviction for other offences as mentioned earlier. In the result, present application for bail is dismissed and accordingly disposed of.

( A. R. JOSHI, J.)

Deshmane (PS)