

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO. 52 OF 2016
IN CRIMINAL APPEAL NO.852/2015**

**ARVIND S/O SARJERAO DEVKAR
VERSUS
THE STATE OF MAHARASHTRA**

**...
Advocate for Applicant : Dhorde Vikram R
APP for Respondents: Mr.R.B.Bagul**

**...
CORAM : V.L.ACHLIYA,J.
DATE : 20/10/2016**

PER COURT :-

Heard learned counsel for the applicant and learned APP for respondent-State.

2] The applicant has moved this application seeking bail on the grounds set out in detail in the application.

3] The applicant was tried for committing offence under Sections 363, 366(A), 376 of IPC and u/s 4 and 6 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the POCSO Act for short) with allegations that he has enticed a girl aged 13 years from the lawful custody of her father and taken to various places and during the period the girl was repeatedly raped by the

accused. On conclusion of the trial, learned trial Court has found the appellant guilty of said offences and sentenced him to suffer R.I. for ten years and fine of Rs.20,000/- for committing offence under Section 376 of IPC. Similar sentence has been awarded for committing offence under Section 6 of the POCSO Act. The sentence of five years and payment of fine of Rs.5000/- has been awarded for committing offence under Section 366-A of IPC. The applicant is awarded R.I. for three years and fine of Rs.5000/- for committing offence u/s 363 of IPC. The sentences are ordered to run concurrently.

4] In nutshell, it is the contention of the learned counsel for the applicant that even if we take the evidence of the prosecutrix in its entirety, it nowhere make out a case that the applicant has enticed the victim girl and forcibly committed sexual intercourse. The evidence of the prosecutrix reflects that though she had opportunity to return to her house. She never made any attempt to return to her house though she had sufficient opportunity to escape. Similarly, though the prosecutrix has deposed that applicant has committed sexual intercourse against her wish and desire, but the evidence on record reflects otherwise. He invited attention to testimony of medical officer who found no marks of violence on the body of the prosecutrix. In the cross examination the medical officer has

admitted the features which were noticed by him on medical examination of prosecutrix and on the basis of which he has opined that prosecutrix had a sexual intercourse, such features can be noticed if the young girl penetrates finger in the vagina and moves fingers. He therefore, submits that there is no cogent, convincing evidence to sustain charge under Section 363, 366-A, 376 of IPC and u/s 4 and 6 of POCSO Act. There are no circumstances to apprehend that in the event the applicant being released on bail, he may misuse the liberty and abscond. He has no record of indulging into criminal activities. He therefore, urged to release the applicant on bail.

5] On the other hand, learned APP has opposed the application with contention that there is a strong case against the applicant. Prosecution has adduced cogent, convincing evidence to prove the guilt against the accused. Prosecutrix who was minor in age has fully supported the case of the prosecution. At the time of incident she was studying in VIIth standard in the school where the applicant was serving as her teacher.

6] Having appreciated the submissions advanced in the light of impugned judgment and order and the evidence of the prosecutrix, I am of the view that no case is made out to entertain the application.

The applicant is convicted for committing serious offence u/s 376 of IPC that too against the minor girl aged about 13 years and who was student of the applicant. The prosecutrix has fully stood by the case of the prosecution. The testimony of the prosecutrix find due corroboration from the medical evidence. There is no serious challenge to the fact that at the time of incident the prosecutrix was studying in 7th standard and her age was thirteen years. In this view, I am not inclined to entertain the application. Hence the application is rejected. Hearing of the appeal is expedited. Trial Court is directed to prepare the paper book as expeditiously as possible and submit the record and proceeding with paper book within six months from the date of communication of order.

(V.L.ACHLIYA,J.)

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