

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

CRIMINAL APPLICATION NO.3903 OF 2016
IN
CRIMINAL APPEAL NO.466 OF 2016

Bhagwat s/o Munjabhau Hoge

..Applicant

Versus

The State of Maharashtra through
Police Station, Manwat,
District Parbhani and anr.

..Respondents

Mr K.B. Jadhav, Advocate for applicant
Mrs P.V. Diggikar, A.P.P. for respondent No.1
Mr R.A. Tambe, Advocate h/f Mr H.U. Dhage, Advocate for respondent
No.2

CORAM : V.L. ACHLIYA, J.

DATE : 16th September 2016

PER COURT

Heard.

2. Perused the application and impugned judgment and order and testimony of prosecution witnesses. On trial, the applicant is found to be guilty of committing offences under Sections 366-A, 376 of Indian Penal Code and under Section 6 of Protection of Children from Sexual Offences Act (hereinafter referred to as 'POSCO Act' for brevity). For committing offence under Section 376 of Indian Penal Code, the applicant has been sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs.10,000/-. Similar sentence has been awarded for committing offence under Section 6 of the POSCO Act. For committing offence under Section 366-A of Indian Penal Code, the applicant has been sentenced to undergo rigorous imprisonment for five years and to pay fine of Rs.5,000/-.

3. Although, the testimony of the prosecutrix reflects that there was an affair between the applicant and the prosecutrix and sexual intercourse was committed with the consent, but at the relevant time, the prosecutrix was minor was aged about 16 years and four months. In this view, the trial Court has held the applicant guilty of the offence, as aforesaid.

4. Learned Counsel for the applicant has strenuously contended that the prosecution has not proved that the prosecutrix was minor at the time of commission of offence. He has further submitted that the applicant was initially granted bail by this Court, which was later on cancelled by the Apex Court. He has further submitted that the applicant is 23 years old and it will take long time to list the appeal for hearing. He has, therefore, urged to release the applicant on bail.

5. Learned A.P.P. has opposed the application with contention that the prosecutrix has fully supported the case of the prosecution. Prosecution has adduced sufficient evidence to establish that at the time of commission of offence, age of the girl was 16 years and 4 months. The certificate showing the birth date of prosecutrix was proved through Head Master of the school. Besides the school record, the prosecution has examined the Medical Officer who has examined the prosecutrix and opined that the age of the prosecutrix found to be in between 15 to 16 years and 6 month. She has further pointed out

that in the cross-examination conducted, the defence has not disputed the incident and act of commission of sexual intercourse with the prosecutrix. The entire emphasis was led to establish that sexual intercourse was consensual. It is, therefore, submitted that there is a strong case against the applicant. During the trial, the applicant was in jail and looking to nature of offence and sentence awarded, the applicant not deserves to be released on bail.

6. Mr Tambe, learned Counsel for respondent No.2 – complainant has also opposed the application. He has submitted that taking into consideration the age of the prosecutrix as 16 and half years, the Apex Court has cancelled the bail granted to applicant by this Court. He has, therefore, submitted that as the bail was cancelled at the trial stage and now the applicant is found guilty of offence, the request of the applicant may not be entertained.

7. Having appreciated the submissions advanced in the light of judgment and order passed by the trial Court and the seriousness of the offence, the sentence awarded by the trial Court and the bail which was granted by this Court to the applicant at the stage of trial cancelled by the Apex Court, the request of the applicant not deserves to be considered. However, the hearing of appeal deserves to be expedited. Hence, the following order:

ORDER

Criminal Application is rejected. However, the hearing of appeal is expedited. The trial Court is directed to expedite the preparation of paper-book and submit the same within twelve weeks from the date of communication of order. On receipt of paper-book, the appeal be listed for final hearing.

(V.L. ACHLIYA, J.)

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