

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

CRIMINAL APPLICATION NO. 5068 OF 2016
WITH
CRIMINAL APPEAL NO. 516 OF 2016

Devanand Rajabhau More .. Applicant

Versus

The State of Maharashtra .. Respondent

.....
Mr D. B. Thoke, Advocate for the applicant
Mr R.B. Bagul, APP for respondent/State
.....

CORAM : V.L. ACHLIYA, J.
DATED : 27.09.2016.

PER COURT :

1. The applicant has preferred an Appeal challenging the Judgment and Order dt. 01.08.2016, whereby the Sessions Court has held him guilty of offence punishable u/s 363, 366 and 376(2) of the Indian Penal Code and Section 6 of the Protection of Children from Sexual Offences Act, 2012. The maximum sentence awarded is of 10 years.

2. Learned counsel for the applicant has strenuously contended that, the prosecution has utterly failed to prove the guilt against the applicant. The prosecution has failed to prove, that at the relevant time of the incident, the prosecutrix was minor. The testimony of the prosecutrix reflects that the sexual

intercourse was consensual. There is no specific opinion even by the Medical Officer, who examined the prosecutrix, that the prosecutrix was subjected to forcible sexual intercourse. In the light of the evidence on record, the learned counsel for the applicant submits that, the applicant has a good case to succeed in an Appeal. During the trial, the applicant was on bail. It will take long time to list the appeal for final hearing. He has, therefore, urged to release the applicant on bail during pendency of the appeal. Learned counsel has referred and relied upon the decision of this Court in the case of **Sunil Baban Gadhave v. State of Maharashtra** reported in 2016(2) ABR (Cri) 498.

3. Learned APP for the State has opposed the application with contention that the prosecution has adduced evidence to prove that at the relevant time of the incident, the girl was minor and below 16 years of age. In this behalf, the evidence in the nature of birth date recorded in the school register has been proved through examining the teacher from the School where the prosecutrix studied 10th std. He has further submitted that, looking to the nature of offence, the sentence awarded and evidence on record, the request of the applicant to enlarge on bail may not be entertained.

4. Having appreciated the submissions advanced for the limited purpose to decide the application, I am of the view that the applicant does not deserve to be released on bail. There is sufficient evidence to connect the applicant with the

commission of offence for which the applicant charged and convicted by the trial Court. As per the evidence on record, *prima facie* it discloses that the prosecutrix was minor at the relevant time of the commission of offence. Even if we accept that the sexual intercourse was consensual, the consent of the prosecutrix is immaterial for the reason that the victim was minor at the time of the alleged incident. The judgment cited has no bearing upon the facts of the instant case as the case cited pertains to decision rendered in Appeal. Looking to the seriousness of the offence and the sentence awarded, I am not inclined to entertain the application. So far as the contention of the learned counsel for the applicant that it will take long time to list the appeal for hearing, the concern of the applicant can be well addressed by expediting the hearing of the appeal. Hence, the following order.

ORDER

- (i) The Criminal Application is rejected.
- (ii) Sessions Court is directed to expedite the work of preparation of paper book and ensure that R&P with paper book is submitted within six months from today.
- (iii) After receipt of R&P with paper book, the liberty is granted to the applicant to move the Court to list the appeal for final hearing.

[V. L. ACHLIYA]
JUDGE