

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

CRIMINAL APPLICATION NO. 5636 OF 2016
IN
CRIMINAL APPEAL NO. 574 OF 2016

Sudhir S/o Vijayanand Suryawanshi .. Applicant

Versus

The State of Maharashtra .. Respondent

.....
Mr Santosh B. Gastgar, Advocate for the applicant
Mr R. B. Bagul, APP for respondent/State
.....

CORAM : V.L. ACHLIYA, J.
DATED : 15.10.2016.

PER COURT :

1. The applicant has moved this application seeking bail on the grounds set out in detail in the application.
2. Heard learned counsel for the applicant and learned APP for respondent/State.
3. In nutshell, it is the contention of learned counsel for the applicant that, though the applicant is convicted u/s 376 & 506 of the Indian

Penal Code and Section 4 of Protection of Children from Sexual Offences Act, 2012 (POSCO Act), the applicant has not committed any offence. He submits that, there was a love affair between the applicant and prosecutrix. The trial Court has awarded the sentence u/s 376 of the IPC and Section 4 of POSCO Act by observing that, at the time of incident, the girl was below 18 years of age though the sexual relationship between them was consensual. He submits that, the applicant has married with the prosecutrix and there is one child aged about 1 year borne out of the wedlock with the prosecutrix. The applicant is a sole bread earner in the family. He has old aged father and mother. It will take long time to finally decide the appeal. He further submits that, the trial Court has committed the serious error in holding that the prosecutrix was minor at the time of the incident.

4. Learned APP submits that, the prosecution has proved that at the time of incident, the girl was minor and, therefore, the conviction of the appellant is fully justified.

5. Having appreciated the submissions advanced in the light of the judgment & order passed as well as the depositions of the witnesses, I am of

the view that the case is made out to enlarge the applicant on bail. The fact is not in dispute that the applicant has married with the prosecutrix and there is one child aged about one year borne out of the wedlock. The prosecutrix has filed affidavit supporting the application. In nutshell, it is stated that the complaint was filed out of misunderstanding. The applicant was on bail throughout the trial. It will take long time to finally hear the appeal. Therefore, considering the over all facts & circumstances of the case, I am inclined to enlarge the applicant on bail. Hence, the following order.

ORDER

- (I) Pending disposal of the appeal, substantive sentence awarded by the trial Court stands suspended.
- (II) Pending disposal of the appeal, the applicant be released on his furnishing bail in the sum of Rs. 15,000/- (Rupees Fifteen Thousand) with one or two sureties in the like amount on the following conditions:
 - (a) The applicant shall appear and record his appearance with Police Station Omerga, Dist. Osmanabad, on last Sunday of every month in between 10:00 and 11:00 A.M. till disposal of the appeal.

- (b) Applicant shall furnish the names, addresses and phone numbers with residential proof of his three close relatives.
- (c) In case of breach of any of the conditions as above, bail granted to the applicants shall be liable to be cancelled.

[V. L. ACHLIYA]
JUDGE