

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 251 OF 2016
IN
CRIMINAL APPEAL NO. 151 OF 2016

Nitin @ Nitesh Mahadeo Pawar. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Vinod Kashid, advocate for Applicant.

Mrs. A.A. Mane, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : MARCH 1, 2016

P.C.:

1 Heard the learned Counsel for the applicant and the learned
APP for State.

2 This is an application under Section 389 of the Code of Criminal
Procedure, 1973 seeking suspension of substantive sentence imposed
upon the applicant. The applicant herein is convicted for an offence
punishable under Section 4 of the Protection of Children from Sexual

Offences Act, 2012, Section 363 and 376 of the Indian Penal Code. The applicant is sentenced to suffer simple imprisonment for 7 years and to pay fine of Rs. 500/- I.d. to suffer S.I. for 7 days for the offence under the provisions of POCSO as well under Section 376 of the Indian Penal Code vide Judgment and Order dated 18/2/2016 by the Designated Judge under Protection of Children from Sexual Offences Act, 2012, for Greater Bombay.

3 Perused the evidence of the victim who happens to be P.W. 1. She has deposed before the Court that since 2012 she was in love with the present applicant. She had not disclosed the said fact to her parents as they would have opposed the marriage between them as the applicant was jobless. It is also admitted by the victim that she was the eldest of siblings, that she had studied upto 12th standard and she could easily distinguish between good and bad. That during the period from 2012 to 2013, she had met the applicant on several occasions i.e. 5 to 6 times. He used to meet her in the college and he had not disclosed about the same to her parents. According to her,

the applicant had proposed marriage with her. That she was on the verge of attending majority. That her date of birth is 23/7/1996 and she was more than 16 years old at the time of the incident.

4 Taking into consideration the fact that the victim had cognition of what is right or wrong and has admitted that she has voluntarily withdrawn herself from the custody of her parents to accompany the applicant to his native place and that the applicant was in custody from 10th April, 2013 to 15th October, 2013 and thereafter from 18/2/2016, the applicant deserves to be enlarged on bail.

5 Hence, following order is passed :

ORDER

(i) The Criminal Application is allowed.

(ii) The substantive sentence imposed upon the applicant is hereby suspended. He be enlarged on bail. Same bail fresh bond.

(iii) The applicant shall furnish his residential address, contact numbers like landline number, cell phone number etc. to the concerned court.

(iv) The applicant shall report to the Court of the Designated Judge under Protection of Children from Sexual Offences Act, 2012, for Greater Bombay once in 6 months on the date specified by the concerned court. Upon failure to attend on two consecutive dates, the prosecution is at liberty to move for cancellation of bail.

6 The Criminal Application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)