

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

**CRIMINAL APPLICATION NO.538 OF 2016
WITH
CRIMINAL APPEAL NO.443 OF 2016**

Suraj Manik Thombre ... **Applicant**
V/s.
The State of Maharashtra ... **Respondent**

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Ms.Tripti R. Shetty, Advocate for the Applicant.
Mrs.M.R.Tidke, APP for the Respondent/State.

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CORAM : P. N. DESHMUKH J.

DATED : 22nd AUGUST 2016.

P.C.

1 This is an application for suspension of conviction and sentence imposed upon applicant, who is convicted for the offence punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 and sentenced to suffer rigorous imprisonment for 10 years and to pay fine of Rs.2,500/-, in default to suffer simple imprisonment of one month and for the offence punishable under Section 506 of the Indian Penal Code and sentenced to suffer rigorous imprisonment of six months.

2 Heard learned counsel for both the parties.

3 Learned counsel for the applicant is praying for suspension of sentence and for release of applicant on bail pending appeal contending that applicant and prosecutrix admittedly were having love relationship, and in the course of time, prosecutrix remained pregnant, and after delivering a child on 2nd December 2013, her statement came to be recorded in the hospital, on the basis of which offence came to be registered.

 Learned counsel for the applicant further submitted that there is nothing on record to establish the date of birth of prosecutrix, as the Birth Certificate produced by her father is not exhibited, and it also creates doubt, if it belongs to prosecutrix, as there is difference in the name mentioned on that document and that of prosecutrix. It is further submitted that though applicant pending the trial had filed application for grant of bail, as in the mean time trial had commenced, his application was not pressed before the trial Court and in the background of above circumstances, thus, contended that applicant be released on bail by suspending his substantive sentence.

4 Learned Additional Public Prosecutor opposed the application on the ground that trial Court has rightly relied upon the Birth Certificate, holding it to be a public document, and as per this document since prosecutrix was found 15 years and 3 months old on the date on which she delivered a child, prosecutrix being minor, applicant is not entitled for bail.

5 Perused the notes of evidence filed along with the application. Prosecutrix has admitted that she, on her own, used to talk

with the applicant being in love with him, and further admitted that they used to meet secretly, and was willingly giving company to applicant whenever asked for, and used to accompany him in the closed room, when it was not occupied by anybody situated in chawl. It is further admitted that occasionally, she was taken to room of one Baban, who, on the arrival of applicant and prosecutrix, used to leave the room, where they used to meet. Applicant in her evidence has further stated that as she was in love with the applicant, she did not disclose this fact to her mother and sister, nor disclosed the discontinuation of her menstrual cycle, and in the background of above, gave birth to a child in the house. It appears that thereafter her statement was recorded on 03/12/2013 in the hospital, on the basis of which offence came to be registered. It is also seen that DNA test of child born to prosecutrix was carried out, which has resulted into establishing biological paternity of such child as that of applicant and prosecutrix.

6 Having considering evidence of prosecutrix, as aforesaid, there is nothing to establish that applicant against her wish or at any time forcibly compelled prosecutrix to meet him, nor it is the case of prosecution that applicant, at any time, on the false pretext compelled prosecutrix for sexual intercourse. It is thus found that there exist consensual relationship between the applicant and prosecutrix. With reference to the date of birth on record, said document is admittedly not proved by the prosecution. From the impugned judgment, the learned Sessions Court appears to have considered the same holding it to be a public document, and thus upon relying the same, has held that the prosecutrix was minor, aged about 15 years 3 months on the, date when she delivered child on 02/12/2013.

7 Having considering the mixed questions of facts and law involved in the appeal, which needs to be duly considered at the time of hearing of appeal and considering the nature of involvement of applicant in the present crime, since it appears that the prosecutrix was willingly accompany applicant having in love with him, which resulted into their indulging into physical relations, till the appeal is heard finally, sentence imposed upon applicant is liable to be suspended directing him to be released on bail as per order below:

- (i) Accused shall be released on bail on his executing personal bond in the sum of Rs.25,000/- with one or two sureties to make the like amount.
- (ii) Applicant on being released on bail, shall mark his presence with Kanjur Marg Police Station on 15th day in the alternate month, pending appeal.
- (iii) Applicant shall produce proof of his residence and shall not leave jurisdiction of this Court pending appeal.

(P. N. DESHMUKH J.)