

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.766 OF 2016

IN

CRIMINAL APPEAL NO.373 OF 2016

Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr.P.S.Rajpandhare for the Applicant.

Smt. P.P. Bhosale, APP. for the State.

CORAM : A.S.GADKARI, J.

DATE : 21st July, 2016

P.C.

1) This is an application for suspension of sentence and for releasing the applicant on bail.

The applicant is convicted under Section 363 and 376 of the Indian Penal Code and under Section 4 of the Protection of Children from Sexual Offences Act, 2012 and sentenced to suffer rigorous imprisonment for three years on first count and for 10 years on second count. The applicant also is directed to pay a total fine of Rs.15,000/-.

2) Heard the learned counsel for the applicant and the learned APP.

The learned counsel for the applicant submitted that, it has come in the evidence that on the date of occurrence of the incident, the age of the prosecutrix was about 16 to 17 years and the age of the applicant was 19 years. He further submitted that in the evidence of Baban G. Pawar (PW.1), the father of the prosecutrix it

has come on record that there is a distance of about 100 KM. between Village Sangavi and Usmanabad. The prosecutrix and the accused were residing at Village Sangavi. The alleged offence has taken place in the city of Usmanabad. He therefore, submitted that it can therefore safely be inferred that it was a case of love affair between the accused-applicant and the prosecutrix. He further submitted that there were disputes between the family of the prosecutrix on one hand and the family of the accused-applicant on the other hand and therefore, the father of the prosecutrix has lodged the present false report against the applicant. The applicant is in Jail since 8.5.2013 and has undergone approximately 3 years of substantive sentence. He therefore, prayed that the applicant may be released on bail, as the applicant is having good merits in the appeal.

3) The learned APP submitted that, on the date of incident, the prosecutrix was about 15 years of age and her consent to the said act is immaterial. She prayed that the present application may be dismissed as the maximum sentence imposed by the applicant is of 10- years.

4) The evidence on record reveals that, on the date of the incident the applicant directed the prosecutrix to accompany him for going to Usmanabad. The distance between Village Sangavi and Usmanabad is about 100 KM. and there are about 12 to 13 villages in between. The Medical Officer Chandrakant Jadhav (P.W.14) in his testimony has stated that as per radiological examination, he gave his opinion that the age of the prosecutrix was 15 to 17 years. As per the record on the date of registration of the offence the age of the applicant accused was approximately 19-years. The Medical Officer in his testimony has only expressed the possibility of sexual intercourse with the prosecutrix.

5) In view of the above, I am inclined to release the

applicant on bail during the pendency of the appeal.

Hence, the following order.

ORDER

- a) The applicant be released on bail on his furnishing PR bond of Rs.25,000/- with one or two solvent local sureties in the like amount.
- b) Before his release the applicant shall deposit a fine amount of Rs.15,000/- in the Trial Court, if not paid earlier.
- c) After his release from Jail, the applicant shall not enter the territorial jurisdiction of Taluka Akkalkot, District Solapur and shall stay away.
- d) Before his release from jail the applicant shall furnish his residential address where he intends to live after his release to the Akkalkot North Police Station, District Solapur.
- e) After his release from Jail, the applicant shall attend the Trial Court once in three months on every first Monday of the month between 11.00 a.m. to 2.00 p.m.
- f) Any two consecutive defaults in attending the Trial Court will entitle the prosecution for seeking cancellation of bail of the applicant.
- g) Application is allowed in the aforesaid terms.

(A.S. GADKARI, J.)