

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application [APPA] No.389 of 2016
in
Criminal Appeal No.204 of 2016

(Ajay @ Aju s/o Baburao Dhodare

vs.

State of Maharashtra, through Sub-Divisional Police Officer and P.S.O., Ramnagar, Chandrapur)

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri R.P. Joshi, Advocate for the Applicant/Appellant.
Shri R.S. Nayak, A.P.P. for the Non-Applciant/State.

CORAM : S.B. SHUKRE, J.

DATE : 9th AUGUST, 2016.

Heard.

Perused the judgment and the record of the

case.

The learned A.P.P. by strongly opposing the
application submits that the Birth Certificates at Exh.24 and
Exh.25 do have presumptive value and they show that at
the time of commission of alleged offence, the victim girl
was hardly aged about 13 years. He, therefore, submits
that no *prima facie* case is made out by the appellant for
seeking suspension of substantive sentence.

According to the learned Counsel for the
appellant, however, this is not so, as the essential
requirement of law as prescribed under Section 22 of the

Registration of Births and Deaths Act, 1969 read with the Maharashtra Registration of Births and Deaths Rules, 2000 (hereinafter referred to as 'the Rules of 2000' for short) has not been fulfilled by issuing the Birth Certificates.

In the case of *Gangadhar s/o Gonduram Tadme vs. Trimbak s/o Govindrao Akingire and others*, reported in *2005(1) Mh.L.J. 94* decided by the Division Bench of this Court, it has been held that presumptive value would attach to a Birth Certificate only when the certificate is issued under the Registration of Births and Deaths Act, or in other words, only when the mandatory requirements for issuance of the certificate are complied with. Relying upon this judgment, the learned Counsel for the appellant submits that there is a doubt in this case about the age of the prosecutrix and it could be said that the prosecutrix had attained sufficient maturity to understand the consequences of her conduct in this case. The learned Counsel for the appellant is right in saying so. The Birth Certificates vide Exh.24 and Exh.25 are not issued in Form No.1 prescribed in the aforesaid Rules of 2000. They have been issued in old format prescribed under the Rules of 1976. These Certificates do not contain some of the columns which are

prescribed in Form No.1 of the Rules of 2000. Therefore, *prima facie* there is a doubt about attaching presumptive value to these Birth Certificates. No ossification test has been conducted in this case. Therefore, I am of the view that the appellant has made out an arguable case and he is entitled to be released on bail by suspending sentence of substantive imprisonment. Hence, the order.

1. The application is allowed.
2. The substantive sentence of imprisonment is hereby suspended till final disposal of the appeal subject to payment of fine, if not paid so far, and till the final disposal of the appeal, it is directed that the appellant be released on bail on his furnishing a P.R. Bond in the sum of Rs.20,000/- together with one solvent surety in the like sum.
3. If the fine amount has not been paid, it be paid within two weeks from the date of release of the appellant from jail.
4. Bonds before the trial Court.

JUDGE

C E R T I F I C A T E

I certify that this order uploaded is a true and correct copy of the original signed order.

Uploaded by: S.D. Waghmare
P.A. to the Hon'ble Judge.

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