

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

CRIMINAL APPLICATION NO.1852 OF 2017

IN

CRIMINAL APPEAL NO. 145 OF 2017

Somnath Bajirao Bande,
Age : 26 years, Occu.: Nil,
R/o. Khadki Kd., Tq. Akole,
District Ahmednagar

**APPLICANT/
APPELLANT**

VERSUS

1. The State of Maharashtra
2. Priyanka Savleram Bhalerao
Age : Major, Occu.: Student,
R/o. Khadi Kd. Tq. Akole,
District Ahmednagar

RESPONDENTS

Mr. R.K. Temkar, Advocate for the applicant
Mr. S.M. Ganachari, A.P.P. for the respondent/State

**CORAM : SANGITRAO S. PATIL, J.
DATE : 20th DECEMBER, 2017**

ORDER :

Heard the learned counsel for the applicant
and the learned A.P.P., representing the prosecution/
State.

2. The applicant/appellant has been convicted
for the offences punishable under Sections 376 (2),

366-A and 363 of the Indian Penal Code, ("IPC", for short) and also under Section 6 of the Protection of Children from Sexual Offences Act, 2012. He has been sentenced to suffer rigorous imprisonment for ten years, one year, six months and ten years respectively besides the amount of fine in respect of these offences. The sentences of imprisonment have been ordered to run concurrently. Thus, the maximum period of sentence of imprisonment passed against the applicant is ten years.

3. The learned counsel for the applicant submits that there is no sufficient and dependable evidence on record to establish that the victim girl was below 18 years of age at the time of the incident. The evidence on record shows that there was love affair between the victim girl and the applicant. She herself left her parental house and went with the applicant to various places. He submits that since the victim girl was above 18 years of age, as seen from the evidence of her father, no offence can be said to have been committed by the applicant. He further submits that the medical evidence also does not support the case of the prosecution. On these grounds, he prays that the sentence of imprisonment passed against the applicant

may be suspended during pendency of the appeal.

4. On the other hand, the learned A.P.P. filed reply and strongly opposed the application. He submits that there is documentary evidence on record to establish the date of birth of the victim girl. She was aged about 15 years 11 months and 6 days at the time of the incident. Consequently, her consent for leaving her parental house at her own and proceeding with the applicant to various places and having sexual intercourse would be immaterial. There is strong medical evidence to support the case of the prosecution. He submits that the applicant is not only a married person but is having two sons. Despite that, he kidnapped the victim girl and committed sexual intercourse with her on the pretext of getting married with her. According to him, the offences committed by the applicant are quite serious. He, therefore, prays that the sentence of imprisonment passed against the applicant may not be suspended during pendency of the appeal.

5. The victim girl specifically states her date of birth as 21/06/1999. Her birth certificate has been produced on record, wherein her date of birth is shown

as 21/06/1999. It is certified that the contents of the said certificate have been reproduced from the original register of births and deaths. With this documentary evidence about the date of birth of the victim girl, the evidence of her father, who is an illiterate person, stating approximately the age of the victim girl as 16 to 17 years in the year 2015 or even stating in his cross-examination that the victim girl might have born prior to 20 years of the year 2016, cannot be attached with any importance.

6. If the victim girl was below 18 years of age, her consent for quitting her parental house for going with the applicant and further having sexual intercourse with him, would be immaterial and the above-mentioned offences would be disclosed against him.

7. The applicant was not only a married person but was having two kids. He was aged about 26 years at the time of the incident. He being quite a matured person, it was for him to persuade the victim girl to refrain from having any objectionable relations with him. However, it seems that instead of restraining the victim girl from having illicit relations with him, he himself

took her to various places and cohabited with her as her husband on the pretext of getting married to her. The applicant, in the circumstances of the case, does not deserve for any discretionary relief or leniency in the form of suspension of sentence of imprisonment.

8. The evidence of the victim girl itself is sufficient to indicate that the applicant committed sexual intercourse with her. Further-more, Dr.Salunke, who examined the victim girl, deposes that the hymen of the victim girl was found ruptured. This evidence, prima facie, supports the case of the prosecution.

9. In the above circumstances, considering the serious nature of the offences committed by the applicant, I am not inclined to suspend the sentence of imprisonment passed against him. In the result, the following order:-

O R D E R

The Criminal Application is rejected.

[SANGITRAO S. PATIL]
JUDGE