

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

**921 CRIMINAL APPLICATION NO. 2050 OF 2017
IN
APEAL/164/2017**

SHARAD INDAL PARDESHI

VERSUS

THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Joydeep Chatterji
APP for Resp. – State : Mr. S.Y.Mahajan.

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CORAM : V.L.ACHLIYA, J.

DATE : 7th JULY, 2017

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ORDER :

1. The applicant has moved this application seeking suspension of sentence and release on bail during pendency of Appeal, for the reasons set out in detail in the application and the grounds raised in the Appeal memo.

2. The applicant was tried for committing the offences punishable u/ss 376 (2), 366 and 506 of the Indian Penal Code and u/s 5 (I) read with section 6 of Protection of Children from Sexual Offences Act, 2012 [for short, 'POCSO Act'] with allegations that the applicant/accused committed repeated sexual intercourse with the minor girl aged 14 years by causing threat to cause bodily harm to her as well as her family members. On conclusion of trial, learned Additional Sessions Judge, Jalgaon pleased to convict the applicant/accused for committing offence u/s 5 (I) punishable u/s 6 of the POCSO Act and sentenced to suffer rigorous imprisonment for Ten years and to pay fine of Rs. 10,000/- and in default of payment of fine to suffer simple imprisonment for two months. The applicant is also held guilty for the offence punishable u/s 376 (2) of the Indian Penal Code. However, no separate sentence has been awarded. Being aggrieved, the applicant/accused has preferred Appeal and pending disposal of Appeal urge to release on bail by suspending sentence.

3. Heard learned counsel for the applicant, learned A.P.P. and perused the impugned Judgment and order passed by the trial Court as well as copies of

depositions.

4. Mr. Joydeep Chatterji, learned counsel for the applicant strenuously contended that the Judgment and order of conviction passed by the trial Court is not sustainable in law. He submits that there is no cogent, convincing and reliable evidence to sustain the conviction. By referring the testimonies of prosecution witnesses, it is contended that the sole testimony of prosecutrix is not sufficient to base the conviction in view of overall facts of the case and evidence on record. He submits that except the testimony of the prosecutrix, there is no corroborative evidence to guarantee the facts deposed by her. He further submits that the trial Court has failed to take into consideration that prosecution has conclusively established that prosecutrix was minor in age. He submits that during the trial, the applicant was on bail and looking to the age of the applicant, he be enlarged on bail by taking into consideration that his association with hardened criminals may adversely affect his future.

5. On the other hand, learned A.P.P. opposed the application with contention that there is strong evidence to sustain the conviction. He submits that the prosecution

has proved that at the time of incident, the prosecutrix was minor and the applicant has repeatedly committed sexual intercourse with her. He submits that as the prosecutrix was minor, her consent becomes immaterial. He has further submitted that though there is no corroborative evidence, but it is settled position in law that if the testimony of the prosecutrix inspires confidence, the Court may base the conviction on such testimony. He urge to reject the application.

6. On due consideration of the submissions advanced in the light of the Judgment and order passed by the trial Court, I am of the view that no case is made out to entertain the application. There is prima facie evidence to show that the prosecutrix was minor in age. The incident was occurred some time in the year 2013. As per the evidence adduced, the prosecutrix was born on 25/08/2000. Thus, at the time of commission of offence, she was minor in age.

7. The prosecutrix has deposed that the accused had committed sexual intercourse with her by giving threat to kill her parents. In view of the fact that prosecutrix was minor in age, the consent of prosecutrix

become immaterial. Thus, considering the overall facts of the case, nature of offence and the sentence awarded by the trial Court, I am of the view that the applicant not deserves to be release on bail. Hence, the application is rejected.

8. The trial Court is directed to expedite the work of preparation of paper book and submit the record and proceedings with paper book within a period of three months. On receipt of record and proceedings with paper book, the applicant will be at liberty to move the Court for filing application seeking leave to file Appeal.

[V.L.ACHLIYA, J.]