

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.241 OF 2017

IN

CRIMINAL APPEAL NO.1031 OF 2015

Revansiddha Amoghsiddha Shendage ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

.....

Mr.Satyavrat Joshi, Advocate for the Appellant.

Mr.P.H.Gaikwad-Patil, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 4th APRIL 2017.

P.C. :

1 This is an application for suspension of sentence and releasing the applicant/accused on bail during pendency of the appeal filed by him. The applicant/accused is convicted of offence punishable under Sections 363 and 366 of the Indian Penal Code ("IPC" for short) so also under Section 6 of the Protection of Children from Sexual Offences, Act ("POCSO" for short). For the offence punishable under Section 6 of the POCSO Act, he has been sentenced to suffer ten years rigorous imprisonment apart from directing him to pay fine of Rs.3000/- in default to undergo further rigorous imprisonment for four months. Lesser sentence is

imposed on him on other counts. As substantive sentences are directed to run concurrently, it is not necessary to write other sentences imposed on the applicant/accused.

2 Heard the learned Advocate appearing for the applicant/accused. He argued that the incident took place on 19/09/2013. The FIR of the same came to be lodged on 02/10/2013. The prosecutrix, according to the prosecution case, at the relevant time was about 16 years of age whereas the applicant/accused was of 24 years of age. However, according to the learned Advocate for the applicant/accused, the prosecution has failed to prove age of the prosecutrix. Though bonafide certificate issued by the school where the prosecutrix took school education was filed with the charge-sheet, the authority issuing the certificate was not examined by the prosecution. Through the evidence of the Investigating Officer though the certificate is marked as exhibit, the contents of that certificate cannot be read in evidence to infer age of the prosecutrix.

3 The learned Additional Public Prosecutor opposed the application by contending that age of the prosecutrix is proved through radiological test and she is stated of 16 years of age at the relevant time of incident in question. The learned Additional Public Prosecutor relied on the evidence of the prosecutrix as well as medical evidence.

4 I have carefully considered the rival submissions and also perused the impugned Judgment and Order as well as depositions of witnesses. Evidence of the prosecutrix herself shows that she was in love with the applicant/accused. She joined company of the applicant/accused on 19/09/2013 and accompanied him to Hanjagi in Akkalkot Taluka, then to Akkalkot and thereafter to Hyderabad. The couple reside there for some time. Evidence of the prosecutrix further shows that at her stay with the applicant/accused at Hyderabad, she was wearing Mangalsutra and behaving like wife of the applicant/accused.

5 It is seen from the evidence of the prosecutrix that no force or violence was used while kidnapping her. Considering the fact that evidence of the prosecutrix *prima facie* shows that she voluntarily joined company of applicant/accused and continued to stay with him for a period of five to six days so also the fact that age of the prosecutrix is not proved by proving contents of bonafide certificate issued by her school by examining authorities from school, I am of the opinion that in view of the ratio in the matter of ***Sunil Mahadev Patil v. State of Maharashtra*** reported in **2016 ALL MR (Cri.) 1710**, the applicant/accused is entitled for liberty and as such the order :

(i) The application is allowed.

(ii) The substantive sentence of imprisonment imposed on the applicant/accused is suspended and he is directed to be released on bail on executing PR bond of Rs.15,000/- and on furnishing surety in the like amount.

(iii) As a condition of this order, the applicant/accused should not contact the prosecutrix in any manner and he should not extend any threat, promise or inducement to her as well as her relatives.

6 Copy of this order be sent to the applicant/accused who is undergoing the jail sentence.

(A.M.BADAR J.)