

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.392 OF 2017

IN

CRIMINAL APPEAL NO.264 OF 2017

Sandip Dada Jagdale ... **Applicant**

V/s.

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

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Smt.Bhakti Bhosale i/b. Mr.Rahul Kate, Advocate for the Applicant.

Mr.Ameet Palkar, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 3rd APRIL 2017.

P.C. :

1 This is an application for suspension of sentence and releasing the applicant/accused on bail during the pendency of appeal filed by him. The applicant/accused has been convicted of the offence punishable under Section 5 read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 and he is sentenced to suffer rigorous imprisonment for 10 years and to pay fine of Rs.25,000/- in default to further undergo rigorous imprisonment for one year. He is also convicted under Section 376(1) of the Indian Penal Code.

2 Heard the learned Advocate appearing for the applicant/accused. She argued that the prosecutrix was aged about 16 years and 9 months at the time of incident in question. The learned Advocate further drew my attention to the evidence of the prosecutrix who is examined as P.W.No.1 by the prosecution and submitted that the applicant/accused is entitled for bail in view of the evidence of the prosecutrix.

3 The learned Additional Public Prosecutor opposed the application by contending that under age minor girl was subjected to the offence which is held to be proved by the prosecution and the report of the DNA is considered by the learned trial Court.

4 I have carefully considered the rival submissions and also perused copies of depositions as well as the impugned Judgment and Order passed by the learned trial Court. The learned trial Court concluded the age of the prosecutrix at the relevant time as 16 years and 9 months. The impugned Judgment and Order shows that the applicant/accused was 20 years old at the time of commission of the alleged offence. With this let us *prima faice* see what the prosecutrix has stated in her evidence. Evidence of the prosecutrix shows that she as well as the applicant were resident of the same locality and they were well acquainted with each other. The applicant/accused is stated to have extended promise to marry the prosecutrix as seen from the evidence of the prosecution. It is further seen from the evidence of prosecutrix

that she was visiting various rooms with the applicant/accused for indulging in sexual relations and ultimately she became pregnant. Cross-examination of the prosecutrix shows that she is acquainted with the applicant/accused since childhood and she was liking the applicant/accused. She had telephonically contacted the applicant/accused and thereby talked with him about the marriage after the prosecutrix attaining the age of 18 years.

5 Evidence of the prosecutrix goes to show that a young man and a young woman were deeply in love and indulged in sexual relations which was outcome of love affair between them. Evidence of the prosecutrix does not show that there was any act of violence or threat at the instance of the applicant/accused. There seems to be no criminal antecedents of the applicant/accused. He had not extended any threat or intimidation to the prosecutrix nor such claim is made by the prosecutrix. On the contrary, she has stated that because of their acquaintance the intimacy between them developed. On this factual background, observations of this Court in paragraph 12 of its Judgment in the matter of *Sunil Patil v. State of Maharashtra*, reported in 2016 ALL MR (Cri.) 1710 became clearly applicable to the case in hand. The applicant was on bail during pendency of the trial and it is seen that he has not misused his liberty at any stage of the trial. In this view of the matter, the following order :

- (i) The application is allowed.
- (ii) The substantive sentence imposed upon the applicant 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 should not extend threat, promise or inducement to the prosecutrix or her relatives and he should not contact the prosecutrix in any manner.

6 The application stands disposed of accordingly.

(A.M.BADAR J.)