

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.681 OF 2016

IN

CRIMINAL APPEAL NO.392 OF 2016

RAM PANCHAPPA KAMBALE

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Ritesh Thobde, Advocate for the Applicant.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 6th MARCH 2017.

P.C. :

1 This is an application for suspension of sentence and releasing the applicant on bail, during the pendency of his appeal filed by him. The applicant / accused has been convicted of offences punishable under Section 363 and 376 of the IPC, apart from offence punishable under Section 4 of the Protection of Children from Sexual Offences Act. He is sentenced to suffer

rigorous imprisonment for 10 years apart from payment of fine for the offence punishable under Section 376 of the IPC and for the offence punishable under Section 363 of the IPC, he is sentenced to suffer rigorous imprisonment for 3 years apart from payment of fine.

2 Heard the learned advocate appearing for the applicant / accused. By drawing my attention to the evidence of parents as well as that of victim child, the learned advocate argued that age of the prosecutrix is not proved by the prosecution and therefore, it cannot be held that she was a child at the time of commission of the alleged offence. The learned advocate further argued that cross-examination of witnesses show that the couple was in love and the victim child had not made any alarm, though according to the prosecution case, she was in company of the applicant / accused.

3 The learned APP opposed the application by contending that the age of the victim child is not disputed by the

applicant / accused. Though examined as a witness, the applicant / accused had not denied the alleged incident.

4 I have carefully considered the rival submissions and also perused copies of deposition of prosecution witnesses. Mother of the victim child has stated age of the victim as 12 years whereas her father disclosed her age as 14 years. The victim child has stated her age to be 13 years apart from stating that she was taking education in 7th Standard in a girls school. Cross-examination of prosecution witnesses does not show that age of the victim girl is disputed by the defence. The applicant / accused has also entered in the witness box as defence witness no.1. He has not disclosed anything about age of the victim child nor denied the incident alleged by the prosecution, while in the witness box. In cross-examination of PW1 Parvati – mother of the victim child, it is suggested by the defence that as the victim child was minor, it was decided that her marriage will be performed later on.

5 In her evidence, the victim child has deposed about penetrative sexual assault on her by the applicant / accused. She denied the suggestion that she was having love affair with the applicant / accused. Hence, at this stage, it cannot be said that as the prosecution has not proved age of the victim child or the offence alleged, therefore, the applicant / accused is entitled to bail.

6 In this view of the matter, judgment of the learned Single Judge of this court in the matter of **Sunil Mahadev Patil vs. State of Maharashtra** rendered on 3rd August 2015, cannot be made applicable to the case in hand, as the fact that the victim child was not found to be of a consenting age, is not disputed from the cross-examination of prosecution witnesses. No case for bail is made out.

7 The application is rejected. Hearing of the appeal is expedited as per its turn in its category.

(A. M. BADAR, J.)