

**CRIMINAL APPLICATION NO.1522 OF 2017
IN
CRIMINAL APPEAL NO.909 OF 2017**

Mr. Shivshankar D. Patil for the Applicant.
Mr. M.G. Patil, APP for the Respondent -State.

DATED: 22nd NOVEMBER, 2017.

P.C.:-

By this application, the Applicant has sought suspension of execution of sentence imposed vide judgment dated 7th October, 2017 passed by the Special Judge under PO.C.S.O. Act in POCSO Special Case No.542 of 2014 and to release him on bail.

2. The Applicant was tried for offences punishable under Sections 363, 366 (A), 376 of the IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act'). The case of the prosecution is that on 4th June, 2014 the Applicant kidnapped the prosecutrix, who at the relevant time was about 15

years of age. The Applicant-accused is also alleged to have sexual relationship with the said minor girl. The learned Special Judge after considering the evidence on record has held the Applicant guilty of the offence punishable under Section 4 of the POCSO Act and sentenced him to undergo rigorous imprisonment for 7 years and to pay fine of Rs.2,000/- i/d. to undergo simple imprisonment for seven years. The Applicant is also sentenced to undergo rigorous imprisonment for 7 years for offences punishable under Section 366(A) of the IPC and to pay fine of Rs.1,000/- i/d. he shall undergo simple imprisonment for thirty days.

3. Mr. Shivshankar Patil, learned counsel for the Applicant submits that there is no prima facie material to show that victim was a minor. He further contends that their relationship was consensual. He further submits that the Applicant is in jail since last two years and that he be released on bail.

4. Mr. M.G. Patil, the learned APP for the Respondent -State submits that the evidence of the victim clearly indicates that at the relevant time she was studying in 9th standard. He further submits that the school leaving certificate shows the year of birth as 1999 and that

the victim is a child within the meaning of Section (2) (d) of the POCSO Act. He further submits that the evidence clearly indicates that the Applicant is a married man and had sexual intercourse with the minor girl. He therefore, submits that considering the gravity of the offence, the Applicant is not entitled for bail.

5. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

6. The records prima facie reveal that at the relevant time the prosecutrix was studying in 9th standard. The prosecution has produced the birth certificate at Exh.8, which shows her year of birth as 1999, there is no cross examination on this aspect. Hence, prima facie in the year 2014, the victim was below 16 years.

7. The evidence of the prosecutrix reveals that the Applicant, who is a married man had assured her a luxurious life, if she marries her. He had taken her to Goa and thereafter to Umarghadi, Bainganwadi and had sexual intercourse with her, under a promise of marriage. The victim is a minor and the consent of the victim is immaterial. Furthermore, evidence of the victim indicates that the

Applicant, who is a married man with a child had sexual intercourse with her, under the promise of marriage. The evidence on record prima facie proves the essential ingredients of the offence.

7. Considering the gravity of the charge, in my considered view this is not a fit case to suspend the execution of sentence and to release the Applicant on bail. Hence, the application is dismissed. However, considering that the Applicant has undergone two years sentence, leave is granted to him to move necessary precipe for expediting the hearing.

(ANUJA PRABHUDESSAI, J.)