

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 1666 OF 2017

IN

CRIMINAL APPEAL NO.1019 OF 2017

Sachin Nana Sable ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Pawan Mali for the applicant

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

CORAM: A.M. BADAR, J.
DATED: 15th DECEMBER 2017

PC:-

1 This is an application for suspension of sentence and releasing the applicant/accused on bail during pendency of the appeal filed by him, it is already admitted for final hearing by this Court.

2. The applicant/accused is convicted for the offence punishable under Section 376 of the Indian Penal Code and under Section 4 of the Protection of Children from Sexual Offences Act, 2012 by the learned Trial Court. On each count he is sentenced to suffer rigorous imprisonment for 7 years and substantive sentence are directed to run concurrently.

3. Heard the learned Advocate appearing for the applicant/accused. He argued that the applicant/accused was also 19 years of age at the time of commission of alleged offence. He was through out on bail during the pendency of the trial and he had not misused his liberty. The learned advocate further argued that the alleged victim of the crime in question cannot be termed as minor female child as there is no iota of evidence to infer that she was below 19 years of age at the time of commission of alleged offence.

4. The learned APP opposed the application by contending that the crime in question is serious and the charges are held

to be proved by the learned trial Court.

5. I have carefully considered the rival submissions and also perused the impugned judgment and order as well as copies of deposition of witnesses examined by the prosecution as well as the defence.

6. According to the prosecution case, the applicant/accused had committed penetrative sexual assault on the victim female child, who is examined as PW-2. Perusal of the evidence of the alleged minor female victim of the crime in question shows that she was deeply in love with the applicant and the love affair between them culminated into physical relationship. Even according to the prosecution case, the alleged minor female child was more than 16 years of age at the time of commission of the alleged offence.

7. So far as the age of the alleged minor female child is concerned, the prosecution has not placed on record any

documentary evidence in proof of age of the PW-2. PW-1 Sultana Zakir Shaikh is mother of PW-2. PW-1 Sultana Zakir Shaikh has stated that the PW-2 is aged about 17 years. She claimed that PW-2 was taking education in 10th Standard, but admitted that she is unable to tell the date of birth of the PW-2. The alleged minor female child i.e. PW-2 while in the witness box on 3.5.2016 has deposed her age as 18 years and has stated that her date of birth is 13.12.1997. She further deposed that in October the applicant/accused called her at Sadhu Waswani garden and had developed physical relations with her against her wish. This part of evidence in respect of wish of the minor female victim child appears to have come on record by way of omission as the alleged minor victim child has accepted the fact that she is unable to tell any reason as to why this fact is not found in her previous statement. She has categorically accepted in the cross-examination that she was having love relations with the applicant.

8. It is well settled that oral evidence is hardly sufficient for determining age of a person. In the case in hand, though the prosecutrix was taking school education and was in 10th standard, for the reason best known to it, the prosecution has not obtained documents as such the bonafide certificate or school leaving certificate or copy of general registration of the school reflecting date of birth of the alleged minor victim child. It is seen that her bony age was not proved by the prosecution by examining the medical officer who has conducted her ossification test of the alleged minor victim child of the crime in question. The learned Advocate for the applicant submits that report of ossification test of the alleged minor female victim was on record with the chargesheet but as it was against the prosecution, the same was not proved. Undisputedly, the application was on bail through out the trial.

9. In this view of the matter, I see no reason to refuse bail to the present applicant/accused. Therefore, 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 his executing P.R.Bond in the sum of Rs.15,000/- and on furnishing surety in the like amount.

(A.M. BADAR, J)