

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO. 730 OF 2018

Shaikh Akhtar Shaikh Noor,
Age : 30 years, Occu. Labourer,
R/o Gadiya Vihar, Jawahar Nagar,
Aurangabad.

...Appellant

Versus

1] The State of Maharashtra

2] "X"

...Respondents

.....
Mr. N. V. Agarwal & Ms. A. S. Mantri, Advocates for
Appellant.

Mr. S. J. Salgare, A. P. P. for Respondent No. 1-State.

Mr. D. A. Naik, Advocate for Respondent No. 2.

.....

**CORAM : T. V. NALAWADE &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 10-12-2018.

JUDGMENT : [Per Shri. T. V. Nalawade, J]

01. The proceedings is filed to challenge the order made by learned Judge, Special Court, Aurangabad in Special (POCSO) Case No. 68 of 2017 on bail application. The Trial Court has rejected the bail application. The charge is already framed against the present applicant for offences punishable under Section 363, 376 of I. P. C. and few Sections of POCSO Act and also the provisions of

Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Heard the learned Counsel for the applicant. The submissions made shows that in the past application for bail was filed and it was rejected by the Trial Court and the proceeding for bail filed in this Court was withdrawn.

02. Though, there are aforesaid circumstances, this Court has carefully gone through the material collected against the applicants. The age of the victim girl is given by her is 13 years. Her version before Police shows that when her parents were not present in the house, the applicant came there, he used force and took her away. She was taken to Mumbai and there in room taken on rent basis she was kept and there the present applicant had used force to establish physical relationship with her. Record of medical evidence shows there was tear of hymen.

03. The submissions made by learned Counsel for the appellant shows that the evidence of mother is recorded and the evidence of school teacher on school leaving certificate is given. The learned Counsel for the appellant submitted that inference is possible on the basis of that evidence that she had reached the age of understanding and there was a consent. When evidence is

given before the Trial Court and the case is not concluded, this Court is not expected to appreciate that evidence and draw some inference on that basis. The victim girl is not yet examined and her version before Police shows that she had not crossed the age of 18 years at the relevant time and age was given by her as 13 years. In view of all the circumstances, this Court holds that it is not possible to interfere in the order made by the learned Special Judge. Appeal stands dismissed.

[SMT. VIBHA KANKANWADI]

JUDGE

[T. V. NALAWADE]

JUDGE

Dahibhate/-