

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.666 OF 2018

IN

CRIMINAL APPEAL NO.483 OF 2018

PRAVIN SHIVAJI KADAM

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Satyavrat Joshi, Advocate for the Applicant.

Ms.V.S.Mhaispurkar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 8th JUNE 2018

P.C. :

1 This is an application for suspension of sentence and releasing the applicant/accused on bail during pendency of the appeal filed by him.

2 Heard the learned advocate appearing for the applicant/accused. He argued that in the case in hand, age of the

alleged victim child is not at all proved by the prosecution, as the School Leaving Certificate produced on record is not proved by examining the witness to prove the contents thereof. The learned advocate further drew my attention to the evidence of Dr.Sushma Shikha (PW3) to demonstrate that there was love affair between the applicant/accused and the alleged victim of the crime in question since past three years prior to the incident. The learned advocate further argued that the applicant/accused as well as the alleged victim of the crime in question were in love and they both had eloped from their respective houses and that is how the crime in question came to be registered. The applicant/accused was on bail during pendency of the trial and therefore, he deserves to be released on bail.

3 The learned APP opposed the application by contending that the School Leaving Certificate was produced on record with list Exhibit 14 and as the victim child was below 18 years of age at the time of commission of alleged offence, her consent, if any, is not relevant. The learned APP further argued

that evidence of Dr.Sushma Shikha (PW3) demonstrated that the victim was subjected to penetrative sexual assault by the present applicant/accused.

4 I have carefully considered the rival submissions and also perused the copy of deposition of prosecution witnesses as well as the impugned judgment and order of conviction and resultant sentence. Undisputedly, the applicant/accused was released on bail during pendency of the trial vide order dated 7th January 2016 passed by the learned trial court in Criminal Application No.4194 of 2015. There is nothing on record to show that he has misused his liberty while on bail.

5 It is well settled that oral evidence is hardly sufficient to conclude age of a person. The age of a person is required to be proved by adducing trustworthy and reliable documentary evidence. In the case in hand, no such evidence is adduced by the prosecution. The School Leaving Certificate placed on record with the list Exhibit 14 is not proved by the prosecution by examining

necessary witnesses. The mother of the victim has deposed about date of birth of the alleged victim, but her evidence is not corroborated by details thereof.

6 Evidence of the Medical Officer shows that the alleged victim of the crime in question as well as the applicant/accused, who were both young persons, were having relationship since past three years and they fled from their respective houses on 23rd November 2015.

7 In the matter of **Satyam Ramchandra Fulore vs. The State of Maharashtra**¹ (Coram : **Sadhana S. Jadhav, J.**), the alleged victim of the crime was 16 years old female child who was intending to marry the applicant/accused therein. With a reason that the girl was in love with the applicant/accused therein, this court, vide order dated 30th September 2014, was pleased to release the applicant/accused therein, on bail. In the matter of **Sunil Patil vs. State of Maharashtra**² in paragraph 12, this court

1 Criminal Bail Application No.1953 of 2014

2 2016 ALL MR (Cri) 1710

has given guidelines while considering the case of a boy and a minor girl in love.

8 Considering the fact that no force or violence was applied to the alleged victim of the crime in question and that the present applicant/accused as well as the alleged victim of the crime in question were having love affair since past three years from the date of the incident and that they had eloped from their respective houses, as well as the fact that the applicant/accused was on bail during pendency of the trial and has not misused his liberty, I see no reason to deny bail to the present applicant/accused, as the appeal filed by him will take time for final hearing. Therefore the order :

ORDER

- i) The application is allowed.
- ii) Substantive sentence of imprisonment imposed on the applicant/accused is suspended and the applicant/accused is directed to be released on bail on his executing PR.Bond in

the sum of Rs.15,000/- and on furnishing surety in the like amount.

iii)As a condition of this order, the applicant/accused should not contact the alleged victim of the crime in question as well as her relatives and the prosecution witnesses, in any manner, during the pendency of the appeal.

iv) Parties to act on authenticated copy of this order.

(A. M. BADAR, J.)