

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.892 OF 2018

IN

CRIMINAL APPEAL NO.727 OF 2018

Jivan @ Jiva Bajirang Bodare... **Applicant**
V/s.

The State of Maharashtra ... **Respondent**

.....

Mr.B.A.Lawate, Advocate for the Applicant.

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

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CORAM : A.M.BADAR J.

DATED : 25th SEPTEMBER 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 The applicant/accused is convicted for the offences punishable under Sections 363, 366-A and 376(2)(i) of the Indian Penal Code as well as under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO' for the sake of brevity). The substantive sentences imposed on him are directed to run concurrently by the learned

trial Court. For the offence punishable under Section 376(2)(i) of the Indian Penal Code as well as under Section 4 of the POCSO, the appellant/accused is sentenced to suffer rigorous imprisonment for seven years apart from imposition of fine and default sentence.

3 Heard the learned Advocate appearing for the applicant/accused. He drew my attention to the evidence of P.W.No.7 Shettappa Patil, retired Headmaster and argued that evidence of this witness is not sufficient to hold that the victim female child was below eighteen years of age at the time of commission of the alleged offence. The learned Counsel further argued that this witness has not produced Inward-outward Register and date of birth of the victim child was recorded in the school record on the basis of Leaving Certificate issued by the Zilla Parishad. My attention was also drawn to paragraph 4 of the cross-examination of the victim female child, who is examined as P.W.No.2 in order to demonstrate that the victim had failed in one class and she was unable to state percentage of marks secured by her in 6th and 7th Standard examination. It is further argued that medical evidence is not supporting the case of the prosecution. The learned Counsel further argued that the applicant was on bail during trial and, therefore, he is entitled to be released on bail.

4 The learned Additional Public Prosecutor opposed the application by contending that age of the victim female child is

proved by the prosecution and the blood of the victim female child was found on the undergarment of the applicant.

5 I have carefully considered the rival submissions and also perused copies of depositions of prosecution witnesses.

6 The victim female child, at the relevant time, was taking education in 8th Std. According to the prosecution case, the applicant/accused kidnapped her and took her to Mangalvedha town, where he committed penetrative sexual assault on her for four days.

7 The P.W.No.2/victim of the crime in question has deposed in tune with the prosecution case. Her date of birth is elicited during her cross-examination. The same is in consonance with her recorded date of birth in the school record. P.W.No.7 Shettappa - retired Headmaster had proved entries in General Register of the school mentioning date of birth of the victim child as 14/01/2000. At this juncture, provisions of Section 35 of the Evidence Act needs to be noted.

8 In this view of the matter, it cannot be said that the prosecution has failed to prove that the victim female child was below 18 years of age at the time of commission of the alleged offence. As such, argument of the learned Counsel appearing for

the applicant/accused regarding consent on the part of the victim pales into insignificance. In the matter of *B.C.Deva v. State of Karnataka*¹, the Honourable Apex Court has held that it is not necessary that the evidence of the victim of the sexual offence must gain corroboration from medical evidence. If version of the prosecutrix about the incident is found to be truthful and trustworthy, it does not require any further corroboration.

9 The case in hand is a case of penetrative sexual offence on a school going girl, whose age appears to be 14 years at the relevant time. In this view of the matter, after trial, the applicant/accused is not entitled for bail even though he might be enjoining his liberty during pendency of the trial.

10 The application is, therefore, rejected.

(A.M.BADAR J.)

Raju
Dattatraya
Gaikwad

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1 (2007) 12 SCC 122.