

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.1004 OF 2017**

**IN**

**CRIMINAL APPEAL NO.611 OF 2017**

**MAHESH TUKARAM PAWAR**

**)...APPLICANT**

**V/s.**

**THE STATE OF MAHARASHTRA**

**)...RESPONDENT**

Mr.Rakesh Bhatkar, Advocate for the Applicant.

Mr.Prashant Jadhav, APP for the Respondent - State.

**CORAM : A. M. BADAR, J.**

**DATE : 19<sup>th</sup> JANUARY 2018**

**P.C. :**

1            This is an application for suspension of sentence and releasing the applicant/accused on bail during pendency of the application filed by him. The applicant/accused is convicted of offences punishable under Section 376(j) and 506 of the Indian Penal Code, 1860, as well as under Section 5(j)(ii) of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). For offences punishable under Section 376(j) of the Indian

Penal Code and 5(j)(ii) of the POCSO Act, the applicant/accused has been sentenced to suffer rigorous imprisonment for 10 years each on both counts, and for the offence punishable under Section 506 of the Indian Penal Code, he has been sentenced to suffer rigorous imprisonment for 1 year. All the substantive sentences are directed to run concurrently.

2            Heard the learned advocate appearing for the applicant/accused. He argued the in view of provisions of Section 42 of the POCSO Act. the applicant/accused should not have been given separate sentence for the offence punishable under Section 6 of the POCSO Act. It is further argued that evidence of PW6 Ajit Kolekar, Gram Sevak, is of no assistance to prove age of the prosecutrix. The learned advocate by relying on evidence of PW6 Ajit Kolekar, Gram Sevak, argued that two dates of birth of the prosecutrix are coming on record from his evidence and his evidence shows that the register was not properly maintained. Some columns in that register were blank. It is further argued that the register was not bearing signature of the Gram Sevak on

each page. It does not contain the name of the informant who reported about the birth date of the prosecutrix. Hence, the prosecution has not proved age of the minor female victim. It is further argued that DNA profile of the abortee was not conducted in order to connect the applicant/accused to the crime in question.

3           The learned APP opposed the application.

4           I have carefully considered the rival submissions and also perused the copies of deposition of prosecution witnesses as well as the impugned judgment and order of conviction. Evidence of minor female child who is examined as PW2 to the effect that she is 16 years of age is virtually unchallenged, and as such, there is no reason to disbelieve her version that she was below 18 years of age, at the time of commission of the alleged offence.

5           Even if two dates of birth of minor female victim, coming on record from the evidence of PW6 Ajit Kolekar, Gram Sevak, are considered, then also it is clear that at the time of the

alleged offence, the prosecutrix was below 18 years of age. Evidence of PW6 Ajit Kolekar shows that because of typographical mistake in the certificate, the date was typed incorrectly, but there is evidence regarding entry of birth of victim as 24<sup>th</sup> May 1999 in the register maintained by the Gram Panchayat. The said register was produced before the court and on the basis of that register, PW6 Ajit Kolekar has deposed before the court.

6           Maintaining of Register of Birth and Death is a mandatory requirement as per the provisions of Registration of Birth and Death Act, 1969. Gram Sevak is Registrar as per the provisions in Section 7 of the said Act and Section 17 of the said Act attaches presumption as to genuineness of entries made in such statutory Birth and Death Register. Those are stated to be admissible under Section 76 of the Indian Evidence Act, 1872, in view of the provisions of Section 17 of the said Act. Hence, at this stage, it cannot be said that evidence of PW6 Ajit Kolekar, Gram Sevak, is of no assistance to the prosecution.

7           The case in hand is a case of impregnation of the minor female child by the present applicant/accused, which was ultimately required to be aborted. Therefore, no case for bail, as such, is made out.

8           The application is, therefore, rejected.

9           Hearing of the appeal is expedited. The parties are at liberty to mention the same after filing of paper book.

**(A. M. BADAR, J.)**