

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1043 OF 2017

IN

CRIMINAL APPEAL NO.1061 OF 2017

MAYA @ MAHENDRA MUKUND KAMBLE)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Gaurav Parkar, Advocate for the Applicant.

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

CORAM : A. M. BADAR, J.

DATE : 23rd MARCH 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. The applicant/accused is convicted of offences punishable under Section 376(f)(i) of the Indian Penal Code as well as under Section 3(a) read with 4 of the Protection

of Children from Sexual Offences Act, 2012. For the offence punishable under Section 376(f)(i) of the Indian Penal Code, the applicant/accused has been sentenced to suffer rigorous imprisonment for 10 years apart from payment of fine of Rs.2,000/- and in default to undergo simple imprisonment for 6 months. On the other count, the applicant/accused is sentenced to suffer rigorous imprisonment for 7 years, but both sentences are directed to run concurrently.

2 I have heard the learned Advocate appearing for the applicant/accused. He drew my attention to the evidence of victim of the crime in question as well as that of her father and argued that evidence of the victim gives an impression that the First Information Report (FIR) in question is lodged by her father whereas evidence of the father shows that he was not inquired by the police for lodging the FIR. The learned Advocate further argued that evidence of father of the victim shows that after lodging the FIR, he was not even aware as to commission of penetrative sexual assault by the present applicant/accused on his

daughter. During investigation it was found that the biological father of the child delivered by the victim is accused no.1 and not the present applicant/accused, who is accused no.4. The learned Advocate further placed reliance on judgment of the learned Single Judge of this court in the matter of **Sunil Patil vs. State of Maharashtra**¹ and submitted that in the light of the guidelines given in paragraph 12 of the said judgment, the applicant/accused, who at the relevant time was just 19 years old, is entitled to be released on bail.

3 The learned APP opposed the application by contending that the consent of the minor victim child is immaterial.

4 Evidence of the victim minor female child goes to show that she had already lost her mother. She was suffering from poverty. Her father was earning livelihood for the family by working as an agricultural laborer.

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5 Cross-examination of the victim minor female child at the instance of the applicant/accused no.4 reflects that the applicant/accused no.4 was not even having friendly relations with the victim minor female child. In cross-examination of the victim minor female child, it has been brought on record that the present applicant/accused called her and she joined company of the present applicant/accused and stayed with him in his house for 1 hour. This material elicited from cross-examination of the victim minor female child cements her version in the chief-examination to the effect that the applicant/accused had called her in his house and committed penetrative sexual assault on her.

6 Evidence of the victim minor female child shows that taking advantage of her poverty, four accused persons were committing penetrative sexual assault on her and some of them were paying her.

7 The judgment in the matter of **Sunil Patil (supra)** proceeded with the reasoning that the law makers have considered the age of 15 years as the age of consent, when marriage is performed. Now the position has been drastically changed. Moreover paragraph 12 of the said judgment contains guidelines which are primarily applicable when the victim and the accused are young persons in a relationship. In the case in hand, from cross-examination of the victim minor female child herself it is brought on record that the present applicant/accused were not in a relationship with each other.

8 The victim minor female child, because of penetrative sexual assault by accused persons, has delivered a child and though the other accused person is held to be the biological father of that child, gravity of allegation against the present applicant/accused is not reduced by this fact only.

9 Taking over all review of the evidence of the victim minor female child, which indicates that her poverty is made use

of for committing repeated penetrative sexual assault on her, no case for grant of bail is made out. However, hearing of the appeal is expedited. Therefore, the order :

ORDER

The application is rejected.

(A. M. BADAR, J.)