

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.1050 OF 2017
IN
CRIMINAL APPEAL NO.865 OF 2017**

Suresh Angloswami Naidu ... **Applicant**
V/s.

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

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Ms.Nasreen S.K.Ayubi, Advocate for the Applicant.

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

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CORAM : A.M.BADAR J.

DATED : 24th JANUARY 2018.

P.C. :

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

2 The applicant/accused has been convicted for the offences punishable under Sections 363 and 366 of the Indian Penal Code as well as Section 6 of the Protection of Children from Sexaul Offences Act, 2012. For the offence punishable under Section 6 of the POCSO Act, he has been sentenced to simple imprisonment for ten years apart from imposing of fine of

Rs.30,000/-. Lesser sentences are given on other counts and all substantive sentences are directed to run concurrently.

3 Heard Ms.Nasreen Ayubi, the learned Advocate for the applicant/accused. She argued that the prosecution has failed to prove the fact that the alleged victim of the crime in question was below eighteen years of age at the time of the incident in question. The evidence of the alleged minor victim shows that on her free will, she had accompanied the applicant/accused and had consensual sex with him. In absence of proof of age, it cannot be said that the applicant had committed the alleged offences.

4 The learned Additional Public Prosecutor opposed the application by contending that the defence has not disputed the age of the prosecutrix.

5 I have carefully considered the rival submissions and also perused the Record and Proceedings.

6 The prosecutrix is examined as P.W.No.2. She has deposed that her birth date is 04/05/2000. From her cross-examination it is elicited that she was minor at the time of the incident in question. Evidence of P.W.No.1 Bamlingappa Shivmurti Jeur, who is father of the prosecutrix shows that at the relevant time, the prosecutrix was 13 to 14 years old.

7 In the wake of this evidence, it is seen from the evidence on record that the applicant as well as the prosecutrix had been together from 04/07/2013 to 29/07/2013 and they had visited various States during their journey. The prosecutrix has stated that during this period, the applicant had committed forcible sexual intercourse with her.

8 As there is *prima facie* evidence to infer commission of offence of penetrative sexual assault on the female child, no case for suspension of sentence and releasing the applicant/accused on bail is made out.

9 The application is, therefore, rejected.

(A.M.BADAR J.)