

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1754 OF 2018

IN

CRIMINAL APPEAL NO.850 OF 2018

Rahul Dattatray Vairat

...Applicant

V/s.

The State of Maharashtra

...Respondent

Mr. Tejas Hilage, Advocate for the Applicant.

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

CORAM : A.M.BADAR, J.

DATED : 31st OCTOBER 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 offence punishable under Section 376(2)(n) of the Indian Penal Code as well as Sections 4, 5 and 6 of the Protection of Children from Sexual Offences Act. He is sentenced to suffer rigorous

imprisonment for ten years apart from direction to pay fine of Rs.1000/- and in default to suffer simple imprisonment for one month.

3. Heard the learned counsel appearing for the applicant/accused. He argued that the alleged victim of the crime in question as well as her mother is not supporting the case of prosecution either in respect of age of the victim or in respect of the forcible nature of the sexual intercourse. Therefore, the applicant/accused is entitled for bail during pendency of the appeal filed by him.

4. As against this, the learned APP opposed the application by contending that age of the victim is proved during the course of the trial and the forensic evidence supports the case of the prosecution.

5. I have considered the submissions and also perused copies of deposition of prosecution witnesses as well as the impugned Judgment and Order of conviction and resultant sentence.

6. According to the prosecution case, the applicant/accused has committed penetrative sexual assault on the PW2/victim child.

Perusal of evidence of the victim child shows that she was in love with the applicant/accused and the relationship subsequently turned into intimacy. Her evidence shows that PW2/victim child and the applicant/accused indulged in consensual sexual relationship. Cross examination of the victim child shows that at the time of her relationship with the applicant/accused, she was more than 19 years of age. Even in her statement under Section 164 of the Code of Criminal Procedure, she has not made any accusation against the applicant/accused. She disclosed consensual sex with the applicant/accused to the learned Magistrate.

7. Evidence of PW1 Rekha Avghade, who happens to be mother of the alleged victim child shows that she delivered her first child at the age of 19 years. Her cross examination further indicates that the victim child was more than 19 years of age at the time of incident in question. It is submitted in her evidence that the victim child was born at the home and she had not noted her date of birth. Her evidence shows that she was required to lodge the FIR at the instance of the medical officer.

8. In the wake of this evidence, I am of the considered opinion that the applicant/accused deserves to be released on bail. Therefore, the order;

- : O R D E R : -

- (i) The application is allowed.
- (ii) The substantive sentence of imprisonment imposed on the applicant/accused is suspended and he is directed to be released on bail on his executing P. R. Bond of Rs.15,000/- and on furnishing surety in the like amount.
- (iii) The application is disposed of accordingly.

(A.M.BADAR J.)