

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1841 OF 2018

IN

CRI. APPEAL NO. 1317 OF 2018

Pandurang Shamrao Sutar ... Applicant

Versus

State of Maharashtra ... Respondent

Mr. Ashok Mundergi, Sr. Advocate I/by Mr. Chetan G. Patil for the Applicant.

Mrs. P.P. Shinde, APP for the respondent State.

**CORAM : B.P. DHARMADHIKARI &
PRAKASH D. NAIK, JJ.**

DATE : APRIL 04, 2019

P.C.:

For the incident dated 12/7/2011, 13/7/2011 and 15/7/2011 the applicant was charged under section 376 IPC. The victim was then about 10 years old and a student.

2. The trial court has vide judgment dated 10/10/2018 convicted him under section 376 and he has been sentenced to suffer life imprisonment and to a fine of Rs. 1000/-.

3. Counsel for the applicant states that the applicant was on bail during the trial and this Court has on 23/11/2011 granted him that bail. Our attention is invited to the report as lodged with a submission that the victim has deposed accordingly and there is no evidence of actual penetration. As at the relevant time POCSO was not there, at the most the facts if proved may attract section 354 IPC. Our attention is also drawn to medical evidence to show that no injuries are found either on victim or the accused.

4. Learned APP is opposing the prayer. She submits that the victim has given necessary details which also bring on record ejaculation and as such contention that section 376 is not attracted, is ill founded. Learned APP is relying upon the deposition of PW 6 Doctor and his report to submit that the finding under section 376 is just and proper.

5. It is not in dispute that we have to consider the facts in the light of the fact that then the Act like POCSO was not in force. Evidence of PW No.6 nowhere points out any penetration. The certificate issued by him i.e. Exh. 64 is also perused by us. His conclusion shows that there was no evidence that sexual intercourse has taken place. He has also stated that PS/PV examination could not be performed as the parents did not give

permission.

6. The defence of the appellant/accused is of false implication on account of report about unsatisfactory completion of contract work by the relatives of the victim.

7. It appears that he was in police custody from July, 2011 till he was released after order of this Court dated 23/11/2011. He has been thereafter taken in custody after the judgment dated 10/10/2018. His employer has already suspended him. In this situation, we are inclined to release him on interim bail. Hence, we pass the following order :

(a) The applicant be released on bail on his furnishing two independent sureties each in the sum of Rs.25,000/- and undertaking that he shall not in any way attempt to bring any pressure or contact the witnesses or the victim.

(b) The applicant shall also undertake to report to the Superintendent/Registrar of District Court at Kolhapur on first working Monday of month once in every two months.

(c) The direction given supra be complied within a period of three weeks from today. Failure to comply with the same shall be construed as breach of this order and the trial court shall thereafter proceed to take the applicant in custody, in accordance

with law.

(e) Application is accordingly allowed and disposed of.

(PRAKASH D. NAIK, J.)

(B.P. DHARMADHIKARI, J.)