

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.44 OF 2019
IN
CRIMINAL APPEAL NO.36 OF 2019**

Vyankatesh Katarappa Palmor ... **Applicant**
V/s.
The State of Maharashtra ... **Respondent**

.....
Mr.Irfan A. Shaikh, Advocate for the Applicant.

Mrs.M.R.Tidke, APP for the Respondent/State.
....

CORAM : A.M.BADAR J.

DATED : 7th FEBRUARY 2019.

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 for the offences punishable under Sections 376 of the Indian Penal Code as well as under Section 4 of the Protection of Children from Sexual Offences Act, 2012 and he is sentenced to suffer rigorous imprisonment for seven years apart from direction to pay fine of Rs.10,000/- and in default to undergo further simple imprisonment for three months.

2 Heard the learned Advocate appearing for the applicant/accused. He argued that there is no iota of evidence against the appellant/accused for the offences alleged and held to be proved against him.

3 The learned Additional Public Prosecutor opposed the application by contending that the victim of the crime in question at the relevant time was minor.

4 I have considered the submissions so advanced and also perused the record made available.

5 The FIR lodged by P.W.No.1 Sunil, who happens to be father of the victim female child is to the effect that as his daughter returned from the school late, he scolded her and that is how she left his house. P.W.No.2, who happens to be daughter of P.W.No.1 Sunil has deposed that as her father scolded her, she left her house, telephonically contacted the appellant/accused and by joining the company of the applicant/accused went to stay with relatives of the applicant/accused at Taloja. In her chief-examination itself, she has stated that the applicant/accused has not misbehaved with her in any manner.

6 Evidence of P.W.No.3 Dr.Kalpna Gupta, who examined the alleged victim of the crime in question shows that

there were no marks of injury on person of the P.W.No.2. The Medico Legal Certificate issued by this witness reflects that there were no external injury on the person of the alleged victim of the crime in question. With the finding that there are old hymenal tears, the Medical Officer deposed that her findings of examination of the victim were consistent with signs of sexual relations. Even if it is accepted it cannot be said that the applicant/accused was responsible for the said act.

7 In the result, the following Order.

ORDER

- (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.)