

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

## CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.66 OF 2019  
IN  
CRIMINAL APPEAL NO.51 OF 2019**

Vishal Anil Naik ... **Applicant**  
V/s.

The State of Maharashtra ... Respondent

Mr.M.K.Kocharekar i/b. Mrs.Prabha U. Badadare, Advocate for the Applicant.

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

**CORAM : A.M.BADAR J.**

**DATED : 14<sup>th</sup> 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 Section 376 of the Indian Penal Code as well as under Sections 4 and 5 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the 'POCSO Act' for the sake of brevity). Maximum sentence awarded to the applicant/accused is that of rigorous imprisonment for ten years for the offences punishable under Sections 5(j)(ii) and 5(1) read

with Section 6 of the POCSO Act. The learned trial Court has directed that the substantive sentences shall run concurrently.

2            Heard the learned Advocate appearing for the applicant/accused. He argued that evidence of the alleged victim of the crime in question shows that she was deeply in love with the applicant/accused. Even in the FIR she has not implicated the applicant/accused as the perpetrator of the crime in question. Subsequently, the applicant/accused was arraigned as an accused in the subject crime. Evidence of the prosecutrix, who is examined as P.W.No.2, is not supporting the prosecution, so also evidence of her mother PW.No.3 Sunita.

3            The learned Additional Public Prosecutor opposed the application by contending that offence is held to be proved against the applicant/accused and, therefore, he is not entitled for bail.

4            I have considered the submissions so advanced and also perused copies of depositions of prosecution witnesses.

5            P.W.No.2 is the alleged victim of the crime in question. She deposed that when she was taking education in 12<sup>th</sup> Std. in the college at Pune, she became acquainted with the applicant/accused and then love affair blossoms between both of them. The P.W.No.2 further deposed that when she was asked to

lodge the FIR, in order to shield the applicant/accused, she lodged the FIR against one Kiran Lokhande to whom she described in her evidence as a fake person. Cross-examination of the alleged victim shows that she has made categorical statement that she has no grievance against the applicant/accused. She stated that even when police interrogated her for recording her statement, she had no grievance against the applicant/accused. Evidence of mother of the prosecutrix shows that the prosecutrix never informed her as to who is responsible for pregnancy of the prosecutrix.

6 Evidence on record indicates that the alleged incident took place when the prosecutrix was running 17 years of her age. At this juncture, it is relevant to note two judgments of this Court in the matter of *Satyam Ramchandra Fulore v. The State of Maharashtra*<sup>1</sup> (Coram : Smt.Sadhana S. Jadhav, J.) and in the matter of *Sunil Mahadev Patil v. State of Maharashtra*<sup>2</sup>, (Coram: Mrs.Mridula Bhatkar, J.).

7 The learned Single Judge of this court in the matter of *Sunil Mahadev Patil (supra)* has made following observations in paragraph 12 of the judgment, which read thus :

“12 When a boy and a minor girl are in love with each other and chose to live together without consent of their parents, then the following factors are to be considered:

(i) What is the age of the prosecutrix, who is minor

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1 Criminal Bail Application No.1953 of 2014.

2 2016 ALL MR (Cri.) 1710.

- (ii) Whether the act is violent or not
- (iii) Whether there are antecedents or not
- (iv) Whether the offender is capable of repeating the Act or not
- (v) Whether there is likelihood of threats or intimidation, if at all the boy is released
- (vi) Whether any chance of tampering with the material witnesses when their statements are recorded
- (vii) It is also to be taken into account in such cases that a boy in his early 20's deserves to get employment and to plan, stabilize and secure his future."

The applicant/accused therein was directed to be released on bail.

8 Similarly, vide order dated 30<sup>th</sup> September 2014 passed in the matter of ***Satyam Ramchandra Fulore (supra)*** was pleased to release the applicant/accused on bail with a reason that the girl was in love with the applicant/accused therein.

9 Undisputedly, the applicant/accused was on bail during pendency of the trial. Considering the nature of evidence available against the applicant/accused, liberty needs to be restored to him. Therefore, the 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.)**