

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.164 OF 2019

IN

CRIMINAL APPEAL NO.165 OF 2019

VIJAY LAXMAN KAMBLE

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA & ANR.

)...RESPONDENTS

Mr.G.W.Awasarmol h/f. Mr.A.G.Awasarmol, Advocate for the Applicant.

Mr.Vinod Chate, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 26th 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. He is convicted of offences punishable under Sections 376(2)(i) and 452 of the Indian Penal Code as well as under Sections 4 and 8 of the Protection of Children from Sexual

Offences Act, 2012. Different sentences are awarded to the applicant/accused on different counts, the highest amongst them being rigorous imprisonment for 10 years for the offence punishable under Section 376(2)(i) of the Indian Penal Code.

2 Heard the learned counsel appearing for the applicant/accused. He argued that mother and father of the alleged victim are not examined. Similarly, uncle of the victim who had called his wife on the spot is also not examined by the prosecution. The learned counsel further argued that by filing an application, birth certificate was brought on record but no opportunity was granted to the defence to cross-examine the concerned witness by calling him. It is argued that no witness is examined to prove the birth certificate. With this, it is argued that the applicant/accused is behind bars since the year 2016 his parents are residing at Kolhapur district. He is a young boy, and therefore, needs to be released on bail.

3 The learned APP opposed the application.

4 The offence is that of penetrative sexual assault on a girl, who was aged about 6 to 7 years, at the time of the incident. Evidence of PW2 Manda, who is aunt of the victim female child, regarding her age is not challenged by way of cross-examination. Similarly, evidence of the victim female child/PW1 regarding her age is also not challenged in the cross-examination. No defence was set out by cross-examining the witnesses that the victim female child was more than 18 years of age at the time of the alleged incident.

5 The prosecution has placed on record birth certificate of the victim female child. As per provisions of Section 17 of the Registration of Births and Deaths Act, 1969, no formal proof is required for such birth certificate. In this view of the matter, at this stage, it cannot be said that the victim female child, who according to the prosecution at the relevant time was 6 to 7 years of age, was infact above 18 years of age.

6 Be that as it may, evidence of the prosecution consists of former statement made by the victim female girl to PW2 Manda, which is admissible under Section 157 of the Evidence Act.

7 That apart, evidence of the victim female child that she was subjected to penetrative sexual assault by the applicant/accused is corroborated by the medical evidence coming on record from mouth of PW3 Dr.Meenakshi Sawant.

8 In this view of the matter, no case for grant of bail is made out.

9 The application is, therefore, rejected.

(A. M. BADAR, J.)