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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION No. 321 OF 2019
IN
CRIMINAL APPEAL No. 316 OF 2019

Akshay Gulabsing Prajapati	...Applicant
Vs.	
The State of Maharashtra and Anr.	...Respondents

Mr. Tejas Hilage for Applicant	
Mr. S.R. Agarkar -APP	

CORAM : SMT.SADHANA S. JADHAV, J.

DATE : MARCH 18, 2019

P.C.:

1. Heard. This is an application under Section 389 of Cr.P.C. seeking suspension of the substantive sentence imposed upon the Applicant by the Special Judge, Pune vide judgment and order dated 31.1.2019 in Special (Child) Sessions Case No. 128 of 2014 for the offence punishable under Sections 323, 376 r/w. 506 of the Indian Penal Code and also punishable under Section 4 of the Protection of Children from Sexual Offences Act, 2012 and sentenced to suffer R.I. for 10 years, in default, further S.I. for one year.

2. It is the case of the prosecution that the prosecutrix and the Applicant were attending the same school. They were known to

each other. It is alleged that on 24th April, 2013, the Applicant herein had expressed his desire to get married to the prosecutrix and, thereafter, the Applicant and the prosecutrix had eloped to Vairag. It is alleged that they had also rented a room. They stayed overnight. According to the prosecutrix, the appellant had ravished her at Vairag. On 25th April, 2013, she had called upon her maternal uncle and her father and they had been to Vairag and brought her back home. Thereafter, she was attending the college regularly. According to her, thereafter, the Applicant had taken her to various lodges situated at Alandi- Pune Road viz. Abhishek Lodge, Sawali Lodge and he had ravished her. She was unable to give the exact dates on which she had accompanied with the Applicant at the lodges.

3. According to the prosecutrix, on 5.2.2014, the Applicant had called her at his home on the pretext that his mother wanted to talk something with her. However, actually when the prosecutrix went to his home, he was alone. He had slapped her and asked her to go inside the house and pushed her in the bed room and had ravished her against her wish. She had informed the said incident to her father. On 6th April, 2014, the first information report was lodged. The prosecutrix has deposed before the Court

that she had narrated the incident of 5th February, 2014 to her maternal uncle. He had reduced it into writing. Thereafter, there were discussions in the family and on the next date, the report was lodged at the police station. In her statement recorded under Section 164 of Cr.P.C. , she has disclosed that the Applicant had refused to marry her and, therefore, she was constrained to inform the same to her parents and the report is lodged.

4. The learned counsel for the Applicant submits that there was love affair between the prosecutrix and the Applicant which lasted for more than one and half years. At the time of lodging of the FIR, the age of the prosecutrix was 17 years and 4 months and the Applicant was about 19 years' old.

5. It is true that the prosecutrix had attained the age of understanding. At the time of medical examination, the prosecutrix had disclosed to the doctor that she was acquainted with the accused for about four years.

6. In the above mentioned facts of the case, the Applicant deserves to be enlarged on bail. The Applicant was on bail during the pendency of the trial and has not breached any conditions imposed upon him. The Applicant, therefore, deserves for

extension of the same relief during pendency of the appeal.

7. Hence, the following order.

Order

- (i) The application is allowed.
- (ii) The substantive sentence imposed upon the Applicant by the Special Judge, Pune vide judgment and order dated 31.1.2019 in Special (Child) Sessions Case No. 128 of 2014 is hereby suspended.
- (iii) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.20,000/- and one or more sureties in the like amount.
- (iv) The Applicant shall report to the Special Judge, Pune on the date assigned by the Learned Special Judge. Upon failure to attend any two consecutive dates, the Learned Special Judge, Pune shall make report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

Criminal Application stands disposed of in the aforesaid terms.

[SMT.SADHANA S. JADHAV, J.]