

Vat

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

CRIMINAL APPLICANT No. 386 OF 2019
IN
CRIMINAL APPEAL No. 419 of 2019

Gautam @ Bhimrao Arjun Shinde	...Applicant
Vs.	
The State of Maharashtra and Anr.	...Respondents

Mr. Arun K. Rajput for Applicant
Ms. Pallavi Dabholkar -APP

CORAM : SMT.SADHANA S. JADHAV, J.

DATE : MARCH 14, 2019

P.C.:

1. Heard. This is an application under Section 389 of Cr.P.C. seeking suspension of substantive sentence imposed upon the Applicant by the Additional Sessions Judge, Greater Mumbai vide judgment and order dated 24.8.2018 in POCSO Spl. No. 241 of 2016 for the offence punishable under Sections 363, 376 of the Indian Penal Code and Section 4 of the Protection of Child from Sexual Offences Act, 2012.

2. It is the case of the prosecution that the prosecutrix, who is aged about 17 years' old, was acquainted with the accused applicant prior to five months of the incident. She was residing with her grand-mother. Her date of birth is 27th of July, 2000. On 23rd February, 2016, one Shailesh had called her to meet him near Century Building. She had obliged. Thereafter the accused

applicant had met her at Dadar Railway Station, from where, they had proceeded to Matunga Railway Station and had loitered in the same area. At night, they had slept below the bridge on the railway station and at that time, the accused applicant is alleged to have ravished her. On the next day, she continued to be in the company of the accused. She had again slept with him below the bridge and they had sex. She returned home on 25th February, 2016. Her grand-father had inquired with her about her whereabouts from 23rd February, 2016 to 25th July, 2016. She was constrained to disclose the truth and the grand-mother had taken her to the police station and, thereafter, the report was lodged.

3. The learned counsel for the Applicant has vehemently submitted that the statement under section 161 of Cr.P.C., the victim had categorically stated that she had no complaints against anybody and that she had given the report at the behest of her grand-parents.

4. It is elicited in the cross examination that the victim is suffering from schizophrenia and she is taking treatment from KEM Hospital since 2012. That for some time, she was kept at Child Care Center at Dongari. At the time of recording of evidence, she was lodged in a Rehabilitation Women Center as her grand-mother is 70 years' old and her father is suffering from mental illness. She has admitted that when she tells about something, she feels pain.

5. Upon perusal of the evidence adduced by the prosecution, it is clear that the applicant has love with victim. The Applicant is in custody from 27th of February, 2016. Taking into consideration

the facts of the case and the evidence adduced by the prosecution, the Applicant has made out a case for grant of bail. Hence the following order:

ORDER

- (i) Application is allowed.
 - (ii) The substantive sentence imposed upon the Application by the Additional Sessions Judge, Greater Mumbai vide judgment and order dated 24.8.2018 in POCSO Spl. No. 241 of 2016 is hereby suspended. The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.15,000/- and one or more sureties in the like amount.
 - (iii) The Applicant be enlarged on provisional cash bail for a period of eight weeks, within which he shall furnish sureties to the satisfaction of the Trial Court.
 - (iv) The Applicant shall report to the Sessions Court at Greater Bombay on the date assigned by the Learned Sessions Judge. Upon failure to attend any two consecutive dates, the Learned Sessions Judge shall make report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.
- Application stands disposed of in the aforesaid terms.

[SMT.SADHANA S. JADHAV, J.]