

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 501 OF 2019
IN
CRIMINAL APPEAL NO. 508 OF 2019

Pintya Krushna Hedkule.

..Applicant.

V/s.

The State of Maharashtra & anr.

..Respondents.

Mr. Omkar G. Nagwekar, advocate for applicant.

Mr. S.R. Agarkar, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : APRIL 10, 2019.

P. C. :

1 Heard the learned Counsel for the applicant and the learned APP for State.

2 This is an application under section 389 of the Code of Criminal Procedure, 1908 seeking suspension of substantive sentence imposed upon the applicant. The applicant herein is convicted for offence punishable under section 363, 376 of the Indian Penal Code and under section 4 of the Protection of Children from Sexual Offences Act, 2012 by Special Judge, POCSO, Thane in Special Case No. 335 of 2016 vide Judgment and Order dated 13/2/2019. The applicant is sentenced to suffer R.I. for 10 years and to pay fine of Rs. 10,000/- I.d. to suffer S.I.

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for 6 months for offence punishable under section 4 of the Protection of Children from Sexual Offences Act. The applicant is sentenced to suffer R.I. for 3 years and to pay fine of Rs. 5,000/- I.d. to suffer S.I. 3 months for offence punishable under section 363 of the Indian Penal Code.

3 Perused the notes of evidence. It is the case of the prosecution that P.W. 2 who happens to be the prosecutrix was a minor at the time of incident. That she was acquainted with the applicant for a long time. She has deposed before the Court that on 24/7/2016 at about 8 p.m. she had voluntarily been to the house of the accused. Thereafter, she eloped with him. She had resided with the accused at Bhiwandi for about one month and thereafter, they had been to Jawhar. The prosecutrix has candidly admitted that even before she eloped with the applicant, she had intimate relations with him and had sexual intercourse with him. They had decided to get married and accordingly got married in temple. They returned home after 2 months and thereafter, the applicant was arrested. Since the applicant was arrested, the prosecutrix was sent to shelter home and at that time, she was carrying pregnancy at an advanced stage of 7 months. She has specifically admitted even in the cross-examination that she was in love with the accused.

4 The date of birth of the prosecutrix is 20/8/2002. She was 14

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years and 6 months old at the time of incident. It is true that the consent of the victim cannot be taken into consideration in the eventuality she is a minor. However, in the present case, it will have to be taken into consideration for the simple reason that the applicant happens to be a biological father of the child. They were married. When the prosecutrix had returned home after two months, she was not accepted by her parents and therefore, had to be referred to the shelter home where she delivered a child. As on today, it would be necessary to take care of the child and the applicant will be the only person who can take care of the child.

5 Reliance can be placed on the Judgment of the Hon'ble Apex Court in the case of S. Varadrajana v/s. State of Madras (1965 SC 942) regarding the mental ability to understand the consequences of her act. The Hon'ble Apex Court held as follows :

“It must, however, be borne in mind that there is a distinction between "taking" and allowing a minor to accompany a person. The two expressions are not synonymous though we would like to guard ourselves from laying down that in no conceivable circumstance can the two be regarded as meaning the same thing for the purposes of s. 361 of the Indian Penal Code. We would limit ourselves to a case like the present where the minor alleged to have been taken by the accused person left her father's protection knowing and having capacity to know the full import of what she was doing voluntarily joins the accused person. In such a case we do not think that the accused can be said to have taken her away from the keeping of her lawful guardian. Something more has to be

shown in a case of this kind and that is some kind of inducement held out by the accused person or an active participation by him in the formation of the intention of the minor to leave the house of the guardian."

6 In view of the above, this would be the fit case to enlarge the applicant on bail during the pendency of the appeal. Hence, following order is passed :

ORDER

- (i) The application is allowed.
- (ii) The substantive sentence imposed upon the applicant vide Judgment and Order dated 13/2/2019 passed by Special Judge under POCSO, Thane in Special Case No. 335 of 2016 is hereby suspended and 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 shall mark his presence before the Special Judge, Thane once in 6 months on the date assigned by the Special Court, Thane. Upon failure to attend any two consecutive dates, the Special Court, Thane shall report the same to the High Court. The prosecution is at liberty to move for cancellation of bail.

7 The application is disposed of accordingly.

The parties to act on the authenticated copy of this order.

[SMT. SADHANA S. JADHAV, J.]

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