

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 571 OF 2019
IN
CRIMINAL APPEAL NO. 564 OF 2019

Laxmiputra Siddhanna Jogade. ..Applicant.

V/s.

The State of Maharashtra. ..Respondent.

Mr. Vikarant V. Phatate, advocate for applicant.

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

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : APRIL 22, 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 sentence imposed upon the applicant. The applicant is convicted for the offence punishable under section 376(i) of the Indian Penal Code as well as under section 4 of the Protection of Children from Sexual Offences Act, 2012 and sentenced to suffer R.I. for 7 years and shall pay fine of Rs. 5,000/- I.d. to suffer imprisonment for one month by the Additional Sessions, Solapur vide Judgment and Order dated 22/3/2019 in POCSO Case No. 31 of

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2017.

3 The facts of the case are peculiar. Upon perusal of the evidence of the victim, it appears that the victim was in love with the applicant. She has stated before the Court that she was being forced to marry with her maternal uncle. She was in love with the present appellant. She could not take pressure any more and therefore, she eloped from her house alongwith applicant. Her mother had lodged FIR at Akkalkot North Police Station, thereby alleging that the applicant herein has kidnapped her minor daughter and hence, offences were registered under section 363, 366A and 376(2)(i) of the Indian Penal Code. Upon considering the statement of the victim, the applicant was enlarged on bail after filing of the charge-sheet.

4 The victim has deposed before the Court that pressure had mounted upon her and she was being forced to marry her maternal uncle. The marriage was scheduled to be performed at 6/2/2017 and hence, she left the house. She called upon the applicant from her friend's house and from there they both had eloped. On 4/8/2017 they went to Chennai by train and stayed in Chennai for 2 days at the railway station. She had specifically deposed before the Court that they had consensual sexual intercourse. On 10/8/2017 they had reached at

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Kadappa, where they had resided for one day. She had contacted her mother from the cell phone of the accused/applicant. She was called back and therefore, they returned to Dudhani at about 11.30 p.m. on 11/8/2017 and on 12/8/2017 her statement was recorded by the police of North Akkalkot Police Station in the presence of her mother. She has admitted before the Court that her maternal uncle used to beat her in order to coerce her to marry him and her mother was helping her maternal uncle. She had been in love with the present applicant for a long time. She has further admitted that she had informed the applicant that he could be her only Savior and if he would decline to marry her, she intends to commit suicide and therefore, forced him to take her alongwith him. She had admitted before the court that in order to restrain her from committing suicide, the applicant had helped her and they both had eloped. According to her, on 4/8/2017 her age was 16 years and 9 months.

5 Needless to say that the victim had attained the age of understanding. She was being forced to to marry her maternal uncle against her wish and at her request, the applicant was left with no other alternative, but to elope with her.

6 It is pertinent to note that the earlier case was registered as

Sessions Case No. 105 of 2017 and the second case was registered as 261 of 2017. Upon perusal of the evidence of the victim, this Court is of the opinion that the applicant would be entitled to be enlarged on bail during the pendency of the appeal.

7 It is a pathetic saga of a girl who is forced to marry with maternal uncle by her own mother. The learned Counsel for the applicant submits that when the applicant was in custody in Sessions Case No. 261 of 2017, the marriage of the victim has been performed with a third person.

8 Hence, following order is passed :

ORDER

(i) The application is allowed.

(ii) The substantive sentence imposed upon the applicant vide Judgment and Order dated 22/3/2019 by Additional Sessions Judge, Solapur in Sessions Case No. 105 of 2017 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 solvent sureties in the like amount.

(iii) The applicant shall furnish his residential address and contact numbers to the concerned Court.

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(iv) The applicant shall report to the Sessions Court, Solapur once in 6 months on the date specified by the Sessions Court, Solapur. Upon failure to attend any two consecutive dates the Sessions Court shall report the same to the High Court and the prosecution is at liberty to move an application for cancellation of bail.

9 The application is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]