

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 688 OF 2019
IN
CRIMINAL APPEAL NO. 657 OF 2019
WITH
CRIMINAL APPEAL NO. 689 OF 2019

Mahesh Bhimraj Jadhav ... Applicant/Appellant
V/s.
The State of Maharashtra ... Respondent

Mr. Ramesh B. Jadhav for Applicant/Appellant.
Mr. S.S. Pednekar – APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J
DATED : 18th JUNE 2019.

P.C. :

1. Heard.
2. This is an application filed under Section 389 of Cr.P.C. The applicant herein is seeking suspension of substantive sentence imposed upon the applicant by the Additional Sessions Judge and designated Judge for POCSO, Greater Bombay in POCSO No. 457 of 2014, vide judgment and order dated 12th March 2019. The applicant is convicted for the offence punishable under Section 376 of Indian Penal Code and under section 6 of the Protection of Children from Sexual Offences Act, 2012 and he is sentenced to suffer R.I. for ten years and pay a fine of Rs. 20,000/-, in default, he is sentenced to

suffer further R.I. for three months. No sentence is imposed upon the applicant under section 376 of Indian Penal Code. The applicant is acquitted under section 4 of Protection of Children from Sexual Offences Act, 2012.

3. Perused the papers and the notes of evidence. More particularly the evidences of PW-1 and PW-7. The learned Sessions Judge has taken into consideration the opinion given by PW-7 that “Mahesh Bhimrao Jadhav in F.S.L. M.L. Case No. DNA-474/14 and Ms.X are concluded to be the biological parents of DNA of 'X' to parents of 'Ms.X'”. The witnesses could not be shattered in the cross examination. The learned counsel for the applicant has submitted that there are inconsistencies in the evidence of the witnesses and that only at the time of trial he had learnt that victim was already married. The survivor had to undergo medical termination of her pregnancy since it is a case of rape. By virtue of explanation-1 to Section 3 of the Medical Termination of Pregnancy Act, 1971.

4. The learned counsel also submits that it can be the case of consensual sex and therefore, it would not attract Section 376 of Indian Penal Code. In the present case it is seen that it was a case of love affair and consensual sex and the victim was a minor at the time incident, her consent cannot be taken into consideration and moreover, it is specific case of the prosecution that after she had conceived pregnancy, the present applicant had committed breach of promise to marry and therefore, the learned APP submits that this would amount to abandon the victim and her love in a state of distress.

5. In view of this, the applicant seeking enlarge on bail deserves to be rejected.
6. However, at the request of learned counsel for the applicant the final hearing of the appeal deserves to be expedited, since the applicant was hardly 21 years old at the time of incident and as on today he is 26 years old. The records and proceedings be called for along with paper-book. Liberty to mention the matter for expeditious hearing.
7. Both the applications are rejected.

(SMT. SADHANA S. JADHAV, J)