

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1198 OF 2019

IN

CRIMINAL APPEAL NO.384 OF 2018

RAVIRAJ DAMU GAIKWAD

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Rahul Arote, Advocate for the Applicant.

Mr.Vinod Chate, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 18th SEPTEMBER 2019

P.C. :

1 This is an application for suspension of sentence and releasing the applicant/accused on bail during pendency of the appeal filed by him. The applicant/ accused is convicted of offences punishable under Section 376D of the Indian Penal Code as well as under Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012. Maximum sentence awarded to him is that of rigorous imprisonment for 20 years. Identical conviction and sentence is imposed on the co-accused.

2 Heard the learned counsel appearing for the applicant/accused. He argued that the applicant/accused is behind bars for more than five years and evidence of the alleged victim of the crime in question points out out case of consensual sex. She had enjoyed dinner with drinks with the applicant/accused as well as the co-accused. There is evidence of withdrawal of money by the accused persons for paying the same to the alleged victim of the crime in question. My attention is drawn to evidence of alleged victim of the crime in question to show that she is having boyfriend and was enjoying sex with him. It is further argued that age of the alleged victim is not proved by the prosecution and the ossification test conducted by PW11 Dr.Vijay Jadhav shows that the alleged victim of the crime in question was aged about 15 to 17 years. With this, it is submitted that if the difference of two years on each side is considered, then the alleged victim of the crime in question may be 19 years of age. Therefore, the applicant/accused is entitled for bail.

3 The learned APP pointed out evidence of PW16 Mangesh Nagothane and submitted that age of the victim is duly proved by the prosecution by adducing clear and cogent evidence in the form of Birth Certificate of the victim female child maintained under the Registration of Births and Deaths Act, 1969. The learned APP, therefore, submits that alleged theory of consent is of no consequence.

4 I have considered the rival submissions and also perused the material placed on record.

5 Evidence of PW4, who happens to be the alleged victim of the crime in question, shows that as her mother had beaten her because she was seen with her boyfriend, she left the house and then joined company of the applicant/accused as well as the co-accused. As per her version, she was in the motorcar with the applicant/accused and the co-accused, where she came to be raped by both of them.

6 PW12 Pratap Dhumal had caught the
applicant/accused and the co-accused red handed in the car in
company of the victim of the crime in question.

7 In order to support oral evidence of PW4/victim
female child that her date of birth is 27th June 1999, the
prosecution has examined PW16 Mangesh Nagothane, a clerk
working in the Office of the Registrar under the Registration of
Births and Deaths Act, 1969. He has placed on record extract of
Birth Register as well as Birth Certificate issued as per provisions
of the said Act. The same is admissible as per the provisions of
Section 77 of the Evidence Act. This evidence is further supported
by the bony age of the victim reflected by the ossification test.

8 In this view of the matter, consent, if any, of the victim
female child is of no consequence. At the time of the alleged act,
the victim female child was a child as defined by Section 2(d) of
the Protection of Children from Sexual Offences Act, 2012. The

case is that of gang rape of the victim female child. Hence, the following order :

ORDER

- i) The application is rejected.
- ii) Needless to mention that observations made in this order are prima facie in nature and shall not have any bearing on disposal of the appeal.
- iii) Hearing of the appeal is expedited.

(A. M. BADAR, J.)