

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1288 OF 2019
IN
CRIMINAL APPEAL NO. 1047 OF 2019**

Mahadeo Arjun Kamble ..Applicant.

Versus

The State of Maharashtra & anr. ..Respondents.

Mr. Sachin H. Deokar, advocate for applicant.
Mr. S.S.Pednekar, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : AUGUST 6, 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, 1973 seeking suspension of substantive sentence imposed upon the applicant by the Additional Sessions Judge at Pune vide Judgment and Order dated 6/7/2019, thereby convicting the appellant for offence punishable under section 376 of the Indian Penal Code and also under section 4 of the Protection of Children from Sexual Offences Act, 2012 and

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sentencing him to suffer R.I. for 7 years. The applicant is acquitted of the offence punishable under section 363 and 366 and 417 of the Indian Penal Code.

3 In the present case, it is pertinent to note that the victim at the time of incident was 17 years and 10 days old, whereas the accused-applicant was about 19 years old. That there is no material on record to even remotely indicate that the applicant had abducted or kidnapped the victim and hence, he is rightly acquitted for the offence punishable under 363, 366 and 417 of the Indian Penal Code. The victim was in the company of the accused-applicant for more than 13 days.

4 Upon perusal of the evidence of the victim, it can be seen that she has denied to have stated to the doctor that she had got married to the applicant. However, P.W.3 Dr. Yuga Mohan Jagdale has deposed before the Court that the date of birth of the victim is 13/10/1996. She is more than 17 years old. He had recorded the history in the language of the victim and she had stated that she was having love affair with the applicant since one year prior to the incident. She had eloped with him. On 5/10/2014 they stayed at a lodge at Solapur. They had

consensual sex on that day. According to her, she got married on 6/10/2014. Then she was residing in Akluj till police had brought her. It is true that at the time of incident, the victim had attained the age of understanding.

5 In addition to this, the Investigating Officer Shri Sanjay Chavan has specifically admitted that the first informant i.e. mother of the victim had disclosed to him that prior to eloping she had seen her daughter talking with the applicant at various times. That there is an entry in the case diary to indicate that the victim and accused showed school documents about their age to the Manager of the Lodge Shri Kawade. Those were ascertained by him. He has also admitted that he had not taken station diary entry about each and every statement recorded by him. He had recorded statement of Shri Kawade and Shri Ingale, but the same is not placed on record. He has also admitted that he had not submitted muddemal i.e. marriage document, toe ring, marriage string, anklets, love letters alongwith charge-sheet. By inference, it can be said that the investigating officer had in fact, collected all the material, but has failed to place it on record. Prima facie, it appears that there was intimacy between the applicant and the victim and

that they had got married on 6/10/2014.

6 The learned Counsel for the applicant has submitted that during the pendency of the trial the applicant was in custody from 17/8/2014 to 30/10/2014 and continued to remain on bail till judgment is delivered on 6/7/2019. That during the pendency of the trial, he has not committed breach of conditions imposed upon him. Hence, he is entitled to extension of the same relief during the pendency of the appeal. In view of the above discussion, the applicant deserves to be enlarged 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 is hereby suspended. The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- with one or more solvent sureties in the like amount.
- (iii) Upon being enlarged on bail, she shall mark his presence before the Additional Sessions Judge, Pune once in 6 months on the date assigned by the learned Sessions Court., Pune. Upon failure to attend any two consecutive dates, the

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learned Sessions Court, Pune shall report to the High Court and the prosecution is at liberty to move for cancellation of the bail.

7 The application is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]