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D. Pandit

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1314 OF 2019
IN
CRIMINAL APPEAL NO.936 OF 2019**

Shri Chandrakant Laxman More

....Applicant.

V/s.

State of Maharashtra and Anr.

..... Respondents.

Mr. Aniket U. Nikam i/b Mr. Vivek N. Arote for the Applicant.

Mr. S.P. Rajepandhare i/b Mr. Jyotiram S. Yadav for Respondent No.2.

Mr. A.A. Palkar, APP for the State.

CORAM: NITIN W. SAMBRE, J.

DATE: DECEMBER 6, 2019

P.C.:-

1] Appeal is already admitted.

2] Considering the pendency, there is no likelihood that appeal will be heard in the near future.

3] Applicant/Accused is convicted by the Special Judge, Pune vide impugned Judgment dated 28/05/2019 for the offence punishable under Section 3 read with Section 4 of the Protection of Children from Sexual Offences Act, 2012 for period of fifteen years and under Section 376(2)(f)(i)(n) of the Indian Penal Code also for a period of

15 years.

4] Perusal of the judgment impugned reflects that the offender i.e. present Applicant is a father. The victim girl and her mother have not supported the alleged incident, whereas conviction is based on medical evidence and the oral evidence of P.W 6 who is a friend of the victim and P.W.4 who is a social worker. The conviction of the Applicant/Accused is also based on oral testimony of the victim girl about her age. Prosecution has not brought on record any documentary evidence so as to establish the prosecution case that on the date of the alleged incident, the victim girl was a minor. As such, prima facie, it appears that the conviction of the Accused cannot be based only on oral evidence under the provisions of POCSO Act. Appropriate support can be drawn from Division Bench of this Court in the case of *Ravi Anandrao Gulpude vs. State of Maharashtra*¹.

5] Apart from above, so far as the conviction of the Accused under the provisions of Section 376(2)(f)(i)(n) of the IPC is concerned, once the victim girl and her mother have not supported the case of the

¹ 2017 ALL MR (Cri) 1509

prosecution, it is difficult to rely on the testimony of the friend of the victim (P.W.4) and the social worker (P.W.6) to prima faice sustain the conviction thereunder.

6] In the aforesaid backdrop, Application, in my opinion, needs to be allowed.

7] Applicant is directed to be released on bail on P.R. bond of Rs 50,000/- with one or two sureties in the like amount. The Applicant shall not influence the witnesses or tamper with the evidence. If victim girl and her mother are of the opinion that the Applicant/Accused shall not stay with them, Applicant/Accused shall keep himself away from victim girl and her mother and shall not in any way try to influence their regular life. Single complaint from victim girl or her mother will entail the prosecution to move for cancellation of bail.

8] Application is allowed in the aforesaid terms and disposed of.

(NITIN W. SAMBRE, J.)