

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1854 OF 2018

IN

CRIMINAL APPEAL NO.606 OF 2017

Vitthal Shrirang Kamble & Ors.

...Applicants

V/s.

The State of Maharashtra

...Respondent

Mr. Nitin V. Gaware a/w. Mr. Vivek Tadke, Advocate for the Applicants.

Ms. P.N. Dabholkar, APP for the Respondent/State.

CORAM : A.M.BADAR J.

DATED : 22nd FEBRUARY 2019

P.C. :

1. This is an application for suspension of sentence and releasing the applicant/accused No.1 on bail during pendency of the appeal filed by him. The applicant/accused No.1 is convicted of the offences punishable under Sections 363, 366, 506(2) and 376 of the Indian Penal Code as well as under Sections 3, 4 and 5 read with Sections 6 and 7 of the Protection of Children from

Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act' for the sake of brevity). Different sentences are awarded to him on different counts, the highest amongst them being that of rigorous imprisonment for ten years apart from direction to pay fine of Rs.25000/- and in default to undergo simple imprisonment for six months. The learned trial Court had directed that the substantive sentences shall run concurrently.

2. I have heard the learned Counsel appearing for the applicant/accused No.1. He argued that there is no convincing evidence regarding age of the victim female child as the prosecution has not brought evidence on record to show that birth register was maintained as per the provisions of Registration of Birth and Death Act, 1969. No witness was examined to prove this fact. He further argued that similar is the case regarding the age recorded in the school register. On that count also, no evidence is adduced by the prosecution. With this, it is argued that cross-examination of the victim female child shows that she was accompanying the applicant/accused No.1 at various places after eloping with him and despite tons of opportunity to escape from

alleged custody of the applicant/accused No.1, she continued to be accompany him though out till the applicant/accused No.1 and the victim female child were apprehended by the police. He further argued that the applicant/accused No.1 was on bail during the pendency of the trial and as of now he has undergone more than 3½ years of sentence imposed on him. The learned Counsel further submitted that earlier joint bail application was not pressed so far as the present applicant/accused No.1 is concerned.

3. The learned Additional Public Prosecutor opposed the application by pointing out evidence of the victim female child and argued that it was the applicant/accused No.1 who threaten to commit suicide and to put father of the victim in jail and that is how she was kidnapped by the applicant/accused No.1. It is further argued that the victim of the crime in question was below 18 years of age and as such her consent, if any, is of no consequence.

4. I have considered the submissions so advanced and perused the material placed on record.

5. Evidence of the victim female child shows that after joining the company of the applicant/accused No.1 on 12.07.2015, she had stayed with the applicant/accused No.1 at various places including Baramati, Daund, Rashin, Jalgaon etc. Her evidence shows that ultimately police caught them and brought them to the police station. When the victim was taken to the medical officer, she had given history to the effect that she was having love relations with the applicant/accused No.1 since last year and she had eloped with the applicant/accused No.1 and got married with him at Village Bhigwan, Baramati.

6. Evidence of the victim female child so also that of her aunt PW-2/Sushma Nivangune shows that initially the applicant/accused No.1 had proposed the victim female child and requested her grandmother to marry her with him. Evidence of the victim female child shows that she was residing with her grandmother. Grandmother of the victim female child refused the proposal by stating that the victim has yet to attend majority. In this context, one will have to judge truthfulness of the version of the victim female child that because of threat of the

applicant/accused No.1, she accompanied him. This will have to be done at the time of final hearing of the appeal.

7. The prosecution has produced on record certificate issued by the Registering Authority under Registration of Birth and Death Act, 1969 showing the date of birth of the victim female child as 31.01.2000. Similarly, school leaving certificate of the victim female child was also produced on record. Neither anybody from the office of the Registering Authority, nor any employee of the school was examined to prove the fact that general register of the school or birth register was properly maintained by following the procedure prescribed by the relevant Act and Rules.

8. It is thus seen that the applicant/accused No.1 and the alleged victim of the crime in question was in love with each other. There was no application of force and because of love relations, it appears that the victim female child had eloped with the applicant/accused No.1. She was more than 15 years and five months of her age at the time of the alleged incident. She stayed with the applicant/accused No.1 at various places for months

together without any protest. At this juncture, it is apposite to quote the observations of this Court in the matter of ***Sunil Mahadev Patil v. State of Maharashtra***¹. In paragraph 12, this Court has laid down guidelines in a case where a boy and a minor girl in love chose to live together without consent of their parents. Paragraph 12 of the said ruling needs reproduction and it reads thus :

“12 When a boy and a minor girl are in love with each other and chose to live together without consent of their parents, then the following factors are to be considered:

(i) What is the age of the prosecutrix, who is minor.

(ii) Whether the act is violent or not.

(iii) Whether there are antecedents or not.

(iv) Whether the offender is capable of repeating the Act or not.

(v) Whether there is likelihood of threats or intimidation, if at all the boy is released.

(vi) Whether any chance of tampering with the material witnesses when their statements are recorded.

¹ 2016 ALL MR (Cri.) 1710.

(vii) It is also to be taken into account in such cases that a boy in his early 20's deserves to get employment and to plan, stabilize and secure his future.”

9. Similarly, vide order dated 30th September 2014 passed in the matter of Satyam Ramchandra Fulore vs. The State of Maharashtra² this court (Coram:Sadhana S. Jadhav, J.) was pleased to release the applicant/accused No.1 on bail with a reason that the girl was in love with the applicant/accused No.1 therein.

10. In this view of the matter, as the applicant/accused No.1 was on bail throughout the trial and as he has not misused his liberty, I proceed to pass the following order.

ORDER

(i) The application is allowed.

(ii) The substantive sentence of imprisonment imposed on the applicant/accused No.1 is suspended and he is directed to be released on bail on his executing P. R.

² Criminal Bail Application No.1953 of 2014

Bond of Rs.15,000/- and on furnishing surety in the like amount.

(iii) As a condition of this order, the applicant/accused No.1 should not contact the alleged victim of the crime in question or her relatives in any manner.

(iv) As a condition of this order, the applicant/accused No.1 should not repeat commission of similar offences in future.

(iv) The application is disposed of accordingly.

(A.M.BADAR J.)