

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APPA) NO.931/2019 IN
CRIMINAL APPEAL NO. 708/2019

Firoz Khan Mehboob Khan Pathan .vs. State of Maharashtra through PSO
P.S. Wadki, Dist. Yavatmal.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. Y. B. Dhonde, Advocate for applicant.
Mr. N. R. Rode, A.P.P. for non applicant-State.

CORAM : V. M. DESHPANDE, J.
DATED : DECEMBER 09, 2019

This is an application for suspension of substantive jail sentence and for grant of bail. Applicant was convicted by learned Additional Session Judge,-2, Yavatmal on 21.09.2019 in Special (POCSO) Case No.48/2017 for an offence punishable under Sections 376(1) of the Indian Penal Code and Section 4 of the Protection of Children From Sexual Offences Act and was directed to suffer rigorous imprisonment for ten years and to pay a fine of Rs.10,000/-.

This appeal was admitted on 08.11.2019. Consideration of this application was deferred till the receipt of the record and proceedings. Record and proceedings are received and placed before this Court today when this application was taken up for consideration.

Heard Mr. Dhonde, learned counsel for applicant and Mr. Rode, learned A.P.P. for non applicant-State. Also perused relevant documents and evidence of victim (PW1), Dr. Poonam (PW5) and Nilesh (DW1).

Perusal of the evidence of victim would show that she was in love with the applicant. In her evidence itself, photocopy of her birth certificate was brought on record. It is at Exh.-20. It shows that her date of birth is 08.07.2000.

Learned counsel for applicant invited my attention to evidence of Nilesh (DW1), a Gram Sevak of Panchayat Samiti, Ralegaon. Relevant part of evidence of Nilesh (DW1) reads as under:

“As per our record, there is no entry of name “Avanti”. On 10.08.2000, there is no such entry to our record. The computerized birth certificate used to be issued on the basis of original record. Exh.-20 is not as per our record of that date.”

In view of above, it is crystal clear that one can reach to the conclusion that birth certificate of the victim is not proved in accordance with law. Further evidence of Dr. Poonam (PW5), would show that she was unable to give any opinion about recent sexual intercourse.

The applicant was on bail during trial. At that time, he has not misused the liberty granted to him. In that view of the matter, I pass the following order.

ORDER

- (i) The application is allowed.
- (ii) Substantive jail sentence imposed upon applicant-Firoz Khan Mehboob Khan Pathan by learned Additional Session Judge,-2, Yavatmal on 21.09.2019 in Special (POCSO) Case No.48/2017, shall remain suspended during the pendency of the present appeal.
- (ii) Applicant-Firoz Khan Mehboob Khan Pathan, be released on bail on he executing P.R. Bond in the sum of Rs.25,000/- with one solvent surety in the like amount.
- (iii) Applicant shall attend Police Station, Wadki, Tq. Ralegaon, Dist. Yavatmal, once in six months during the pendency of the present appeal.
- (iv) Applicant shall attend the Court each and every date of hearing of this appeal.

The application is disposed of.

JUDGE