

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1419 OF 2020
IN
CRIMINAL APPEAL NO.451 OF 2020

Tanaji s/o Madhavrao Palajkar = APPLICANT

VERSUS

The State of Maharashtra & Anr. = RESPONDENT/S

Mr.GP Shinde, Advocate for Applicant;
Mr.SW Mundhe, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 13th October, 2020.

PER COURT:-

1. Heard learned Advocate and learned APP appearing for respective parties.

2. In this Criminal Application, the applicant prays for suspension of substantive sentence and releasing him on bail during pendency and final hearing of the Criminal Appeal.

3. The applicant is original accused No.1 in Special Case (POCSO) No.6 of 2020, who has been convicted by learned Additional Sessions Judge, Bhokar, District Nanded, vide judgment and order dated 19th June, 2020, whereby, the applicant has been convicted, thus, -

a) Under Section 376(2)(i)(n) of IPC and

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sentenced to suffer R.I. for ten years and fine of Rs.5,000/-, in default, S.I. for six months

b) under Section 363 of IPC and sentenced to suffer R.I. for three years and to pay fine of Rs.2,000/-, I.D.S.I. for three months; and

c) Under Section 366-A of IPC and sentenced to suffer R.I. for four years and fine of Rs.3,000/-, I.D.S.I. for four months.

. The substantive sentences are ordered to run concurrently.

4. It is vehemently submitted on behalf of the applicant that, in order to prove date of birth of the victim, the prosecution has examined PW 4 – Dilip Ravate – In-charge Headmaster of ZP primary school, who deposed that the victim was studying in the school of which he was working as In-charge headmaster and he brought on record a copy of extract of School Admission Register, which shows that the date of birth of the victim as 22.8.2000. However, in cross-examination, he has admitted that, at the time of giving admission in the school, birth certificate was compulsory document and he has not signed the admission form of the victim. The admission given by this witness creates

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doubt about veracity of the birth certificate and thus the prosecution has failed to prove the date of birth of the victim. Further, PW 7 – victim deposed before the Court that there was love affair between the accused and her since one and half year. They have decided to marry with each other and, therefore, they fled away from the house of her uncle. In her deposition, she does nowhere state that the accused had eloped her or took her along with him against her will or wish, which shows that the prosecution has failed to prove the ingredients of Section 363 and 366(A) of IPC. The victim was a consenting party to the alleged act. Though consent of minor girl is treated as 'no consent' in the eye of law, however, the victim was 16 years at the time of alleged incident and hence it can be said that the victim was at the age of understanding and she was knowing the act committed by her and the accused. The applicant was on bail during the trial and he has not misused the liberty. The learned Advocate further argued that the sentences awarded to the applicant by the learned Special Judge are short term sentences. The learned Advocate further submits that the

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appeal involves other legal points/issues, which the applicant/appellant intends to agitate and address them at the time of final hearing of the appeal and the applicant have every hope of success in the appeal. Consequently, the applicant prays for enlarging him on bail by suspending the substantive sentence awarded by the learned Special Judge on such terms and conditions as this Court may deem fit and proper.

5. Per contra, learned APP resisted the application and supported the reasons assigned by the learned Special Judge while convicting and imposing the sentence against the applicant. The learned Special Judge has properly scanned the evidence brought on record. It is, therefore, submitted that the application being sans merit, deserves to be dismissed and it be dismissed accordingly.

6. In view of the decision in the case of Kiran Kumar Vs. State of M.P. - (2001) 9 SCC 211, the sentence imposed upon the applicant seems to be short term sentence, benefit will have to be extended to the applicant-appellant when he has demonstrated that the material and significant

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points raised by him in the appeal are required to be considered at the time of final hearing of the appeal. Further, the applicant was on bail throughout the trial and he has not misused his liberty. Therefore, it can be said that case is definitely made out for releasing the applicant on bail by suspending the substantive sentence during pendency and final disposal of the appeal. Hence, following order,-

ORDER

- i. The Criminal Application stands allowed.
- ii. The substantive sentence imposed on the applicant by learned Additional Sessions Judge, Bhokar, District Nanded, vide judgment and order dated 19th June, 2020 in Special (POCSO) CASE No.06/2016, is hereby suspended till hearing and final disposal of the appeal.
- iii. The applicant be released on executing PR and SB of Rs.15,000/ (Rupees fifteen thousand) each.
- iv. The applicant shall not commit any criminal activity.

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v. The applicant shall remain present before the learned Trial Judge once in six months, till final hearing and disposal of the appeal, commencing from the date he tenders bail papers and, thereafter, the Trial Judge to fix dates for their subsequent appearances.

vi. In case of two consecutive defaults on the part of the applicant to remain present before the Trial Court, the Trial Court to inform this Court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicant.

vii. Bail before the Trial Court.

(SMT. VIBHA KANKANWADI,J.)

BDV