

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**CRIMINAL APPLICATION NO.3667 OF 2019**  
**IN**  
**CRIMINAL APPEAL NO.1173 OF 2019**

Sagar Pitambar Koli,  
Age about 26 years, Occupation Labour,  
R/o Wadgaon Lambe Tq. Chalisgaon  
Dist. Jalgaon.

**...Applicant**

**VERSUS**

The State of Maharashtra,  
Through Its Poice Station,  
Mehunbare Tq. chalisgaon  
District Jalgaon.

**...Respondent**

.....  
Advocate for Applicant : Mr. H. P. Randhir.  
APP for Respondent-State : Ms. Vaishali Patil – Jadhav.  
.....

**CORAM : SMT.VIBHA KANKANWADI, J.**

**Date of Reserving The Order :  
30-09-2020.**

**Date of Pronouncing The Order :  
12-10-2020.**

**ORDER :**

1. Present application has been filed for suspension of sentence. The applicant/ appellant has been convicted in Special (POCSO) Case No.92 of 2014, by learned Additional Sessions Judge, Jalgaon Dist.

Jalgaon, on 01-08-2019. He has been sentenced thus :

*“1.....*

*2. The accused Sagar Pitambar Koli is convicted for the offence under Section 376 of Indian Penal Code alternatively under section 5(l) read with Section 6 of the POCSO Act and as per the punishment prescribed under Section 6 of the POCSO Act sentenced to suffer rigorous imprisonment for ten years and also to pay fine of Rs.2000/-, in default to suffer imprisonment for three months.....”*

2. Heard learned Advocate Mr. H. P. Randhir for applicant and learned Additional Public Prosecutor Ms. Vaishali Patil – Jadhav for respondent-State.

3. It has been vehemently submitted on behalf of the applicant that, the learned Trial Judge has not appreciated the evidence properly. He failed to consider that the victim had sufficient understanding capacity. In her deposition she is accepting that, there was love affair between her and the accused and they used to keep physical relations at their village when their parents used to be out of house. She was pregnant and, thereafter, when accused intended to marry her and called her, she came along with him on 20-10-2014. She has given birth to a child on 04-11-2014. The relations are with consent and, therefore, the strict analogy ought not to have been adopted. There are various points which the

applicant/ appellant intends to raise at the time of final hearing of the appeal. He was on bail throughout the trial. He has not misused the liberty granted to him and, therefore, the said sentence be suspended till the final hearing and decision of the appeal.

4. Per contra, the learned Additional Public Prosecutor supported the reasons given by the learned Trial Judge and submitted that, the applicant had every knowledge about the age of the girl since they were residing in the same lane. The girl was minor and still when the accused kept physical relationship, she became pregnant. She gave birth to the child. The DNA test has been conducted and it has been certified that, they both are the parents of the child. The consent of the minor is no consent at all and, therefore, the learned Trial Judge has rightly convicted the applicant.

5. At the outset, the points which are in favour of the accused are that, he was on bail since October 2015, though it appears that prior to that for about a year he was in jail. Thereafter, he has not misused the liberty granted to him and no such mention is there in the impugned Judgment. Secondly, the sentence that has been awarded can be said to be small sentence in view Judgment in *Kiran Kumar v. State of M.P.*, reported in (2001) 9 SCC 211. Another fact to be

noted is that, from the testimony of the victim it appears that there was love affair between her and the accused. It also appears that, the applicant was then aged around 25 years. No doubt the victim clearly says that, they used to have physical relationship and after she became pregnant, the accused had taken her along with him. It also appears that, he wanted to marry her but because of the caste difference, it could not happen. Another fact that is also required to be seen is that, according to the victim, she had left the house on 20-10-2014 and she gave birth to the child on 04-11-2014 i.e. hardly after a month. That means, she was pregnant of almost eight months and still the parents of the victim could not notice the said fact, is itself a surprising fact. The effect of the same is delay in lodging the report, is also required to be considered, and therefore, case is made out to suspend the sentence till the conclusion of the appeal. Hence, following order.

#### **ORDER**

- 1) The application stands allowed.
- 2) The sentence imposed on the applicant / appellant in Special Case (POCSO) No.92 of 2014, by learned Additional Sessions Judge, Jalgaon on 01-08-2019, is hereby suspended till the final hearing and disposal of Criminal Appeal No.1173 of 2019.

3) The applicant/ appellant Sagar Pitambar Koli be released on P.R. of Rs.30,000/- (in words rupees thirty thousand only) with two sureties of Rs.15,000/- each (in words rupees fifteen thousand only).

4) Applicant/ appellant shall not commit any criminal activity.

5) Applicant/ appellant to remain present before the learned Trial Judge once in six months, till final hearing and disposal of the appeal, starting from the date he tenders a bail papers and, thereafter, the Trial Judge to fix dates for his subsequent appearances.

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

7) Bail before Trial Court.

**(SMT. VIBHA KANKANWADI)**  
**JUDGE**

vjg/-.