

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 201 OF 2019
IN
CRIMINAL APPEAL NO. 1250 OF 2019**

Omkar Vijay Kamble

... Applicant

Versus

The State of Maharashtra & Anr.

... Respondents

.....

Mr. Ujwal Agandsurve, Advocate for the Applicant.

Mr. A. R. Kapadnis, for the Respondent – State.

.....

CORAM : PRAKASH D. NAIK, J.

DATE : 07th OCTOBER, 2020.

PER COURT:

1. This is an application for suspension of sentence awarded by the Court of Additional Sessions Judge, Solapur in Sessions Case No. 16 of 2017 vide Judgment and order dated 27th August, 2019 convicting the applicant for the offence punishable under Section 4 of Protection of Children from Sexual Offences Act (for short “POCSO”). In view of Section 42 of the said Act no separate sentence is imposed for the offence punishable under Section 376 of IPC. The applicant is however acquitted for the offence punishable under Sections 363, 366 of IPC. Notice was issued to respondent No.2. The report submitted by Yerawada Police Station, states that, notice is served upon respondent No.2.

2. The prosecution case in nutshell is that, on 28th August, 2016, the victim was not seen in the house. The complainant searched her. However, her whereabouts were not known. Complaint was lodged on 29th August, 2016 against unknown person alleging kidnapping. During investigation it was revealed that the accused had kidnapped the victim from lawful guardianship of her parents and took her to Indapur. Victim was sexually abused. First Information Report was registered vide C.R. No. 327 of 2016 for offences punishable under Sections 363, 366, 376 of IPC and Section 4 of POCSO Act.

3. The prosecution examined about seven witnesses. The victim was allegedly aged about 17 years at the time of incident, whereas the accused was aged about 19 years.

4. Learned counsel for the applicant submitted that the applicant was on bail during the trial and he has not misused the facility of bail. On conviction the applicant has been taken in custody on 27th August, 2019. It is submitted that evidence of victim and the other witnesses would at the most indicate that the relationship was consensual. The victim had on her own joined the company of the applicant. The prosecution has not established that victim was minor at the time of incident. There are serious contradictions in the evidence of the witnesses. The version of the victim differs from her

statement under Section 164 of Cr.P.C. The applicant was aged about 19 years at the time of incident. He has good case on merits.

5. Learned APP submitted that the consent of the victim would be immaterial since she was minor at the time of incident. The evidence of the victim and the other witnesses supports the prosecution case. The Trial Court has analyzed the evidence and convicted the applicant.

6. The applicant was on bail during the trial. It is not reported that the facility of bail is misused by him in any manner. The evidence of PW-1 (mother of victim) indicate that the victim used to talk to applicant on phone. The victim was assaulted by her brother on 28th August, 2016. The victim had not made complaint against the applicant. PW-1 received call from Mrs. Shaikh on 31st August, 2016, who informed her that victim had visited her at Sangli with accused. Victim was brought from Sangli. She was told by victim that, after leaving house she went to Indapur with accused at the house of her grand-mother. Thereafter, they came to Mumbai and then went to Sangli. PW-2(victim) has stated that she knows the accused as he was her classmate from 7th Standard. On 28th August, 2016 her brother slapped her. She left for Pune. She made phone call to accused. He called her to Indapur. She went to Indapur. She was taken to house of his grand-mother. There was physical relationship.

They went to Mumbai and then to Sangli and stayed in room of Mrs. Shaikh. Apparently, the victim girl aged about 17 years and the applicant were acquainted with each other. The victim had met the applicant at Indapur, and from there they proceeded to Mumbai and thereafter to Sangli. It also appears that the victim has deviated from her version in statement under Sections 161 and 164 of Cr.PC. The age of the victim as alleged by the prosecution is under challenge by defence. Considering the factual aspects and the evidence on record the sentence of imprisonment can be suspended.

ORDER

i) The sentence of imprisonment awarded by Additional Sessions Court, Solapur vide Judgment and order dated 27th August, 2019 in Sessions Case No.16 of 2017 is suspended during the pendency of the appeal preferred by the applicant and he is directed to be released on bail on executing P.R. bond in the sum of Rs. 25,000/- with one or more sureties in the like amount.

ii) The applicant shall report the Court of Additional Sessions Judge Solapur, once in three months on first Saturday of the month between 11.00 a.m. to 1.00 p.m.

iii) Interim Application stands disposed of accordingly.

7. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)