

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1218 OF 2019

IN

CRIMINAL APPEAL NO.735 OF 2019

Aashhirwad Vishnu Patil	]	
(Presently lodged at Kalyan District Prison)	]	Applicant
Vs.		
The State of Maharashtra and another.	]	Respondents

.....
Ms. Misbaah Solkar i/b Mr. Amin Solkar, for the Applicant.

Ms. M.R. Tidke, Additional Public Prosecutor, for Respondent No.1-State.

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CORAM: PRITHVIRAJ K. CHAVAN, J.

RESERVED ON: 14TH JANUARY, 2020.

PRONOUNCED ON: 7th TH FEBRUARY, 2020.

P.C:

This is an application for suspension of execution of the substantive sentence, pending the appeal and release of the applicant on bail who has been convicted and sentenced by the learned Additional Sessions Judge, Thane of an offence punishable under section 376 of the Indian Penal Code (for short 'I.P.C') and section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO'). Maximum sentence inflicted upon the applicant is of seven years.

2. Heard learned Counsel for the applicant.

3. My attention has been drawn to the evidence of the victim. The sum and substance is that on one day when the victim had been to the river to wash clothes, the applicant came over there with buffaloes and proposed to marry her. Thereafter, he held her hands, took her behind bushes and did forcible sexual intercourse. The applicant used to do the same thing with her regularly. Subsequently, father of the victim approached the applicant and asked whether he would marry her. The applicant refused to marry her though she was impregnated by him. The victim then approached the Police who referred her to a Hospital where it was confirmed after Sonography that she was carrying a fetus of nine months in her womb. Subsequently, the victim delivered a girl child.

4. Apparently, it seems to be a consensual act. Nevertheless, it is the case of the prosecution that the victim was aged about 15 years at the time of the incident. However, there is no reliable and authentic proof of her age. An inordinate delay of nine months has gone unexplained. Even narratives of First Information Report were stated by a third person and not by the victim. There is no D.N.A report establishing paternity of the applicant *qua* the child of the victim.

5. P.W.4 who is a Teacher serving in the Zilla Parishad School, where the victim had studied testified that as per the School Register, victim's date of birth is 26th March, 2001. P.W.7, Rajiv Patil, the Assistant Police Inspector admits in cross that at the time of lodging an F.I.R, age of the victim was mentioned as 18 years. This vital admission of the Investigating Officer gives a jolt to the prosecution story that the victim was a minor at the time of alleged incident. Thus, *prima facie*, it appears to be a case of consensual act between the victim and the applicant and therefore, there are fair chances of the applicant succeeding in the appeal.

6. Learned Counsel for the applicant has drawn my attention to the fact that the applicant is a young chap of 23 years and, therefore, no fruitful purpose would be served in detaining him behind the bars.

7. An affidavit of the father of the victim indicates that since the applicant refused to marry the victim who was 18 years old, they lodged a complaint against him. Surprisingly, his affidavit further reveals that when the applicant was arrested by the Police, elderly persons of the Village tried to settle the matter amongst them, however, the Police forced the victim to give evidence against the applicant. It is more shocking to note that since the applicant was in custody, his marriage with the victim could not be solemnized and, therefore, the victim got married with another person and is

now settled in her life. Father of the victim further clarifies that now they do not have any qualms with the applicant and looking to his young age and future, they have no objection if he is released on bail. Now, to the order.

: ORDER :

[1] Pending the hearing and final disposal of the appeal, execution of the substantive sentence is suspended on applicant furnishing a P.R bond in the sum of Rs.15,000/- with one surety in the like amount to the satisfaction of the learned Additional Sessions Judge, Thane.

[2] The applicant shall attend this Court as and when directed.

The Application stands disposed.

8. All the concerned to act on the basis of the authenticated copy of this order.

[PRITHVIRAJ K. CHAVAN, J.]