

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

**INTERIM APPLICATION NO.1732 OF 2019
IN
CRIMINAL APPEAL NO.1736 OF 2019**

Sunil Gajanan Pawar	.. Applicant
<i>Vs.</i>	
State of Maharashtra	.. Respondent

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Mr.Gaurav Parkar, Advocate for the Applicant.

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

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CORAM : PRAKASH D. NAIK, J.

DATED : OCTOBER 23, 2020.

P.C.:

This is an application for suspension of sentence and grant of bail during the pendency of criminal Appeal No.1736 of 2019, challenging the judgment and order dated 23rd October, 2019, passed by the Special Judge Raigad Alibag in Special POCSO Case No.102 of 2016. The applicant is convicted for the offence punishable under Section 376(2)(n) of Indian Penal Code (“IPC”, for short) and sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs.10,000/-. He is also convicted for the offences under Section 7 punishable under Section 8 of Protection of Children from Sexual Offences Act (“POCSO Act”, for short), Section 3(a) punishable under Section 4 of POCSO Act

and Section 5(1) and (n) punishable under Section 6 of POCSO Act. However, no separate sentence was imposed in view of sentence awarded for conviction under Section 376(2)n) of IPC.

2 Notice was issued to respondent no.2. Learned APP, on instructions, submitted that the victim girl is already married. The applicant was also permitted to serve respondent no.2 (mother of victim) by way of private notice. Learned advocate for the applicant submitted that notice has been served upon respondent no.2 on 17th October, 2020. Respondent no.2, however, informed that she cannot attend the date of hearing. Copy of the notice alongwith the acknowledgment was tendered by learned advocate for the applicant, which is taken on record.

3 The case of the prosecution is that in 2016 she was studying in 11th standard. Accused is their relative. The victim had gone to his house and stayed there for 5 to 6 days. The accused had given her phone and both of them used to have conversation on the cell phone. She was caught by her brother talking to accused. Accused visited her house in the night and while the other family members were sleeping, he took her on a two wheeler to Panvel at the house of his uncle. They stayed

there for one day. Thereafter they went to Morba to the house of relative of the accused. They stayed there for two days. They went to Pune at the house of relative of the accused and stayed there for four days. Accused had physical relation with her thrice. Thereafter both of them went to Chirner to the house of maternal aunt of accused. Police reached there and brought both of them to Poynad Police Station. Victim also stated that previously she was taken to the friend's house by the accused at Panvel.

4 Applicant was on bail during the trial. The age of the victim was around 16 years and four months. The accused and the victim were acquainted with each other. In cross-examination, the victim had stated that she was in love with the accused. Her brother was objected to her love affair. She admitted that she had gone voluntarily with the accused at the time of first incident. She admitted that her parents had assaulted her after she returned home. She admitted that at the time of third incident, she had herself left home at 3:00 a.m. along with her cloths. She had talk with the people in the house at Morba and Pune. The mother of victim has stated that victim has previously gone missing. She admitted that steps were taken by her and relatives of accused to release the accused on bail. She had not lodged any complaint

when her daughter had left home for the first time. P.W.3, who is the medical officer has stated that history was provided by the victim that she had eloped with the accused, and, there was physical relationship with accused three times. However, he did not examine her to determine her age. P.W.

5 The appellant was on bail during the trial. It is not reported that he has misused the bail. The judgment of trial Court mentions that the informant and the victim affirmed affidavits stating that accused has not done anything wrong with victim. Trial Court, however, observed that the accused was relative of the victim. In the facts and circumstances of the case, the sentence of imprisonment can be suspended during the pendency of the Appeal.

6 Hence, I pass the following order:

:: ORDER ::

- (i) The sentence of imprisonment awarded by Special Judge, Alibag, in Special (POCSO) Case No.102 of 2016, vide judgment and order dated

23rd October, 2019, is suspended during the pendency of Appeal against conviction preferred by the applicant and he is directed to be released on bail on his executing P.R.Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

- (ii) Applicant shall report the concerned police station on first Saturday of every month between 11:00 a.m. to 01:00 p.m., till further orders;
- (iii) Applicant shall not approach the victim during the pendency of Appeal;
- (iv) Interim application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)