

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

**INTERIM APPLICATION NO.818 OF 2019
IN
CRIMINAL APPEAL NO.1415 OF 2019**

Rakesh Kondiram Tikone

.. Applicant

Vs.

State of Maharashtra

.. Respondent

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Mr.Uday Warunjikar a/w. Mr.Pankaj D. Purway, Advocate for the Appellant/Applicant.

Ms.A.A. Takalkar, APP for Respondent No.1-State.

Mr.Arun K. Rajput, Advocate for Respondent No.2-original complainant.

Ms.Shilpa Anant Parikh, complainant, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : DECEMBER 07, 2020.

P.C.:

This is an application for suspension of sentence and grant of bail during the pendency of Appeal preferred by the applicant challenging the judgment of conviction dated 30th September, 2019. Applicant has been convicted for the offence under Section 5(1) punishable under Section 6 of Protection of Children From Sexual Offences Act ("POCSO Act", for short) read

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with 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 offence punishable under Section 506(II) of IPC and sentenced to suffer rigorous imprisonment for one year.

2 The case of the prosecution is that the report was lodged by the mother of the victim. It is alleged that the victim was studying in 11th standard. She used to sit in the shop. The accused was also running business in front of the shop of the informant. On 8th March, 2017, the victim told her that, the accused became friendly with her. The accused had forcible sexual intercourse with her. Thereafter, she was threatened and in October 2016, November 2016, December, 2016, January 2017 and February 2017 accused committed sexual intercourse with the victim. First Information Report ("FIR", for short) was lodged on 9th March, 2017. Investigation was completed and charge-sheet was filed.

3 The applicant was in custody from 8th March, 2017 to 17th July, 2017. Subsequently, he was released on bail. He was again taken into custody on the date of judgment of conviction

and from 30th September, 2019, the applicant is in custody. Learned advocate for the applicant submitted that the applicant was on bail during the trial. He has undergone custody for a period of about 18 months. The applicant has not misused the liberty of bail. There are discrepancies in the evidence. The Appeal challenging the conviction has been admitted and pending for final disposal. Learned counsel pointed out the history provided to the medical officer by the victim wherein it was stated that the victim was having love relations with the accused and there was consensual sexual intercourse multiple times. His wife came to know about their relationship. It is submitted that the date of birth of the victim is under challenge before the Court. The applicant has good case on merits.

4 Learned APP submitted that the victim was minor at the time of incident. Medical evidence supports the prosecution case. The accused was a married person and he forced the victim to have a sexual relationship. The consent of victim was immaterial. The victim was taken to various places by the applicant.

5 Learned counsel for respondent no.2 submitted that

the birth certificate of the victim is on record. It is established that she was minor at the time of incident. Her age was around 16 years 3 months. The provisions of POCSO Act are applicable in this case. The consent, if any of the victim, is immaterial. The accused was a married person aged about 32 years. The defence of the accused was not accepted by the trial Court. There is documentary evidence on record to establish the prosecution case. The accused lured the victim girl and had sexual intercourse with her. He relied upon the decision of the Supreme Court in case of ***State of Himachal Pradesh Vs. Shree Kant Shekari***¹.

6 I have perused the documents on record. The applicant was on bail during the trial. He had undergone custody of about 18 months. It is not reported that the applicant has misused the bail during trial. The Appeal challenging the conviction is pending. It was contended that the applicant had challenged the conviction on merits and even date of birth of the victim is under challenge. The history provided by the victim child mentions that the victim was in relationship with the accused and there was consensual sexual intercourse between them.

1 AIR 2004 SC 4404

According to prosecution, the age of the victim was around 16 years. P.W.6 has deposed about the history provided by the victim. She examined the victim. She stated that the hymen of the victim was torn with multiple old tears. There were incidents of sexual intercourse in October 2016, November 2016, January 2017 and February 2017. From the history provided by the victim, it appears that the relationship between the victim and accused came to the notice of wife of the accused. The merits of the case will be decided in Appeal. Considering the aforesaid circumstances, the sentence can be suspended.

7 The efforts put by the learned appointed advocate to represent respondent no.2 are required to be appreciated. He was prepared with the matter and rendered valuable assistance.

8 Hence, I pass the following order:

:: ORDER ::

- (i) Interim Application No.818 of 2019, is allowed;
- (ii) The sentence of imprisonment imposed vide judgment and order dated 30th September, 2019, passed by Additional Sessions Judge, Pune, in

Special (POCSO) Case No.236 of 2017, is suspended during the pendency of Appeal preferred by the Applicant, the applicant is directed to be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;

- (iii) Applicant shall report concerned police station once in every three months on first Saturday of the month between 11:00 a.m. to 01:00 p.m., till further orders;
- (iv) The professional fees of appointed advocate Mr.Arun K. Rajput, respondent no.2 be provided to him in accordance with Rules;
- (v) Interim Application No.818 of 2019, stands disposed of accordingly.

(PRAKASH D. NAIK, J.)