

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

42 CRIMINAL APPLICATION NO.671 OF 2020
IN APEAL/195/2020 WITH APEAL/195/2020

MANGALNATH S/O. GORAKH JADHAV
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. S.D. Kaldate, h/f Mr. Muley Pramod N.
APP for Respondent : Mrs. R.P. Gaur.

CORAM : MANGESH S. PATIL, J.
DATE : 01.03.2021.

PER COURT :

Heard. This is an application under Section 389 of the Code of Criminal Procedure for suspension of substantive sentence pending appeal against conviction.

2. The learned advocate for the appellant would submit that there is genuine dispute as to the date of birth of the victim. The medical evidence in that regard is also not concrete. The learned Judge has observed that there was no violence used against the victim. The appellant is in jail for last almost one year. The appeal is not likely to reach the hearing in the near future. He is sentenced to suffer short term sentence. Relying upon the decision in the case of **Kiran Kumar Vs. State of M.P; 2001 AIR SCW 5130**, the appellant is entitled to suspension of sentence.

3. The learned A.P.P. strongly opposes the application. She submits that it is a matter of penetrative sexual assault on a girl aged 15 years. There is school record regarding her date of birth. Besides there is a medical opinion which corroborates her age to be between 15 and 17 years. The appellant is a married man who had enticed the minor girl and had taken her to various places and satisfied his lust. She would further point out that even

the victim has stated that she was not aware that he was married and in all probability he had lured her with a promise to marry. The offence being serious and as he has been in jail just for a period of one year which is not near even the half of the sentence to which he has been punished, the discretion may not be exercised in his favour.

4. I have carefully gone through the evidence and the impugned judgment as well as the decision cited on behalf of the appellant.

5. As is observed in the case of **Kiran Kumar (supra)**, for the exceptional reasons request for suspension of sentence can be refused.

6. Conspicuously, the matter in the case of **Kiran Kumar (supra)** was not under the Protection of Children from Sexual Offences Act which is a special legislation enacted to punish the offenders of sexual offences against children.

7. As has been rightly demonstrated by the learned Sessions Judge there is enough material to prove that the victim was minor on the date of the offence. There is also evidence to show that the appellant is a married man having three daughters and still has indulged in such act where he took the victim to various places like Karhad, Waghaj and Pune and indulged in sexual intercourse.

8. Though the Medial Officer did not notice any signs of violence, as has been rightly appreciated by the learned Sessions Judge unless it is a case of the victim about she having opposed the overtures, signs of violence would not appear and no weight can be attached to it.

8. Considering all the aforementioned facts and circumstances, it would be appropriate that the appeal is heard finally rather than suspending the sentence by exercising the discretion to which the appellant is not entitled to.

9. The Application is rejected.
10. Since the appeal has already been admitted and even the record and proceeding has reached this Court, hearing of the appeal is expedited.

(MANGESH S. PATIL, J.)

mkd/-