

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 CRIMINAL APPLICATION NO.2285 OF 2020
IN APEAL/652/2020 WITH APEAL/652/2020

DEVIDAS BABAN SARODE
VERSUS
THE STATE OF MAHARASHTRA AND ANR

Mr.S.D. Kotkar, Advocate for the applicant.
Ms.R.P. Gaur, APP for the respondent/State.

CORAM : N.R.BORKAR, J.
DATED : 21.10.2021

PC :-

01. This is an application under section 389 of Cr.P.C. for suspension of sentence and to release the applicant on bail.

02. The applicant came to be convicted for the offence punishable under section 5(n) r/w 6 of the Protection of Children From Sexual Offences Act, 2012 and sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs.10,000/-, in default, to suffer rigorous imprisonment for three months.

03. I have heard learned Counsel for the applicant and learned APP for the respondent/State.

04. Learned Counsel for the applicant submits that there is no convincing evidence in relation to the age of the prosecutrix. It is further submitted that the act was consensual. It is thus submitted that sentence be suspended and applicant be released on bail.

05. On the other hand, learned APP for the respondent/State submits that the applicant is involved in serious crime of penetrative sexual assault on his own niece. It is submitted that the trial court on the basis of evidence on record convicted the applicant for aggravated penetrative sexual assault. It is submitted that considering the facts and circumstances, the application be rejected.

06. I have perused the evidence of the prosecutrix. The prosecutrix who is the niece of the present

applicant/accused has stated in her evidence that the applicant/accused picked her up from the house of her grandparents, on the pretext that there is marriage proposal and the guests are coming to see her and on the way to home the applicant/accused took her in sugarcane field, gagged her mouth and committed sexual intercourse with her and even threatened her of dire consequences, if she dares to disclose about the incident to anybody else. The submission is act was consensual. Prima-facie the act does not appear to be consensual. I am, therefore, not inclined to suspend the sentenced and release the applicant on bail. In the result, following order is passed :-

O R D E R

- (i) The application is rejected.
- (ii) Hearing of the appeal is expedited.

[N.R.BORKAR, J.]