

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.1957 OF 2021
IN
CRIMINAL APPEAL NO.640 OF 2021**

Prajyot Pradip Naik

...Applicant

Versus

The State of Maharashtra and Anr.

...Respondents

....

Mr. Amit Patel i/b. Ms Trupti Khamkar for the Applicant.

Mr. P.H. Gaikwad, APP for the Respondent-State.

Ms Savita Yadav for Respondent No.2.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 8th OCTOBER, 2021.

P.C.:-

This is an application under Section 389 of the Code of Criminal Procedure, 1973 for suspension of substantive sentence imposed vide judgment dated 05/03/2020 passed by the learned Special Judge (POCSO) and Additional Sessions Judge, Sindhudurg, in Special Case (POCSO) No.5 of 2019 and to enlarge the Applicant on bail.

2. By the impugned judgment the learned Judge has held the Applicant guilty of offence under Sections 312, 376(1), 376(2)(n), 417 and 506 of the IPC and Sections 3, 4 and 6 r/w section 5(j)(ii) (l) of the POCSO Act and sentenced him to undergo rigorous imprisonment of 10 years and to pay fine of Rs.10,000/- i/d. to undergo simple imprisonment for two months.

3. Heard learned counsel for the Applicant, learned APP for the Respondent -State and learned counsel for Respondent No.2. Perused the records and considered the submissions advanced by learned counsel for the respective parties.

4. Charge against the Applicant was that he had committed penetrative sexual assault on the prosecutrix, who was below 18 years of age. Learned Judge has held that the prosecutrix was born on 11/11/2000 and that as of the date of the incident she was 16 years and 8 months of age.

5. Learned counsel for the Applicant states that the prosecution has not produced the birth certificate or any other evidence to prove the age of the prosecutrix.

6. A perusal of the impugned judgment reveals that the Trial Court has relied upon copy of the birth certificate, matriculation certificate and Aadhar card, which was undisputedly not tendered in evidence and or exhibited. The evidence of the prosecutrix reveals that she was having friendly relations with the Applicant. She was having physical relationship with him since the year 2016. Her evidence indicates that the Applicant proposed to marry her and that her family members had declined his proposal. The Applicant got married on

14/03/2018. Even after the prosecutrix attained the age of majority and despite knowing that Applicant was married, she continued to keep physical relations with the Applicant.

7. Considering the nature of accusations and the nature of evidence in support thereof, in my considered view this is a fit case for suspending the sentence during the pendency of appeal. Hence, the application is allowed on following terms and conditions:-

- (i) The substantive sentence imposed vide judgment dated 05/03/2020 in Special Case (POCSO) No.5 of 2019 is suspended pending disposal of the appeal;
- (ii) The Applicant is ordered to be released on bail on furnishing PR bonds in the sum of Rs.15,000/- with one or two sureties in the like amount;
- (iii) The Applicant shall report to the Trial Court, once in three months on the day/date specified by the Trial Court, till the appeal is finally disposed of.
- (iv) The Applicant shall keep the Trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time.
- (v) If there are two consecutive defaults in appearing

before the Trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

8. The application stands disposed.

(SMT. ANUJA PRABHUDESSAI, J.)