

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

**INTERIM APPLICATION NO. 2617 OF 2021
IN
CRIMINAL APPEAL NO. 424 OF 2021**

Akshay Bhanudas Shinde Applicant
v/s.
The State of Maharashtra and anr. Respondents

Mr. Ganesh Gole i/b. Mr. Ateet Shirodkar for the Applicant.
Mr. N.B. Patil, APP for the State.
Mrs. Megha Bajoria for Respondent No.2.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 25th NOVEMBER, 2021.

P. C. :-

. Learned APP has placed on record report stating that the Respondent No.2 has been served and she has sought assistance of an advocate from Legal Aid Panel. Ms. Megha Bajoria, learned counsel is appointed to represent Respondent No.2.

2. By this Application filed under section 389 of Cr.P.C., the Applicant has sought suspension of substantive sentence imposed by judgment dated 09/02/2021 in POCSO Special Case No.84/2018. By the impugned judgment, the learned Special Judge under POCSO Act,

Kolhapur has held the Applicant guilty of offence under Section 354-D, 376 of the Indian Penal Code and section 6 of Protection of Children from Sexual Offences (POCSO) Act, 2012. The Applicant has been sentenced to undergo rigorous imprisonment of ten years with fine of Rs.5,000/- in default to undergo rigorous imprisonment for one month in respect of offences under section 376 of IPC and section 6 of POCSO Act. The Applicant has been directed to pay compensation of Rs.50,000/- to the victim under section 33(8) of POCSO Act.

3. Heard Mr. Ganesh Gole, learned counsel for the Applicant, Mr. N.B. Patil, learned APP for the State and Ms. Megha Bajoria, learned APP for the State. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

4. The conviction is based solely on the testimony of the prosecutrix (PW2). She has deposed that she was in love with the Applicant and that the Applicant had sexual intercourse with her under the promise of marriage. The Applicant has denied having had sexual relationship with the prosecutrix. It is to be noted that the prosecutrix has admitted in her cross-examination that she was friendly with one Amol Mahekar

and that she has married him a day after she completed 18 years of age. She has also admitted that she had saved the phone number of Amol in the name of Akshay, the Applicant herein. She has also admitted that she wanted to talk to Amol and that her parents did not know Amol and that they were under the impression that she was talking to the Applicant – Akshay. Under the circumstances, the contention of the prosecutrix that she was in love with the Applicant and that the Applicant had sexual intercourse with her under the promise of marriage, prima facie, appears to be doubtful.

5. The records reveal that the prosecutrix was pregnant and subsequently, she gave birth to a child who expired the same night. No DNA was conducted so as to establish the paternity of the child. In the light of the above facts and circumstances as well as the nature of nature of accusations and evidence in support thereof, in my considered view, this is a fit case for suspension of substantive sentence pending hearing of the Appeal. Hence, the Interim Application is allowed on following terms and conditions :-

- (a) Substantive sentence imposed against the Applicants by judgment dated 09/02/2021 in POCSO Special Case No.84/2018, is suspended pending hearing of the Appeal ;

(b) The Applicant shall be released on bail on furnishing P.R. Bonds in the sum of Rs.20,000/- with one or two solvent sureties in the like amount to the satisfaction of the Trial Court ;

(c) The Applicant shall report to the Trial Court once in two months on the day/ date specified by the Trial Court, till the Appeal is finally disposed of ;

(d) The Applicant shall keep the trial Court informed of his current address and mobile/contact numbers and/or change of residence or mobile details, if any, from time to time ;

(e) 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 application seeking cancellation of bail.

6. Interim Application stands disposed of accordingly.

(SMT. ANUJA PRABHUDESSAI, J.)