

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

**INTERIM APPLICATION NO. 2983 OF 2021
IN
CRIMINAL APPEAL NO. 973 OF 2021**

Dinesh Laxman Dhotre

..Applicant

v/s.

The State of Maharashtra & Anr.

..Respondent/s

Mr. Harshad Sathe for the Applicant.

Mr. S.V.Gavand, APP for the Respondent-State.

Ms. Vrushali Maindad for the Respondent No.2.

CORAM : ANUJA PRABHUDESSAI, J.

DATED : 21st DECEMBER, 2021.

P.C.

1. This is an Application under Section 389 of Cr.P.C. filed by the Applicant for suspension of sentence imposed by judgment dated 18.01.2020 in Special Case NO.16 of 2017, Ratnagiri.

2. By the impugned judgment, the learned Special Judge has held the Applicant guilty of offence under Section 376(2)(i), 376(2)(j) and 376(2)(n) of IPC , and under Section 4 and 6 of Protection of Children from Sexual Offences Act, 2012, and

sentenced him to undergo rigorous imprisonment for 10 years and to pay fine of Rs.10,000/- in default to suffer simple imprisonment for four months.

3. Heard Mr. Sathe, learned Counsel for the Applicant. He submits that the prosecution has failed to prove the DNA report beyond reasonable doubt. He submits that the relationship was consensual. He further submits that the Applicant was ready to marry the victim, but it was she who refused to marry the Applicant.

4. Shri Gavand, learned APP and the learned Counsel for Respondent No.2 submit that the victim is a child within the meaning of Section 2(d) of the POCSO Act. He further submits that the DNA report is only a corroborative piece of evidence. He submits that the evidence of the victim (PW2) proves the offence of rape/ penetrative sexual assault.

5. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties.

6. The charge against the Applicant was for repeatedly subjecting the minor girl, who was below 16 years of age, to penetrative sexual assault. The evidence of the victim, (PW2) reveals that her date of birth is 12.06.2002. This is also confirmed by PW3 (Mother of the victim). There is no challenge to the statement of PW2 and PW3 as regards the date of birth. The evidence of the victim and her mother vis-a-vis the Birth Certificate produced by PW 6 at Exh.60 proves that the victim was below 18 years of age and a child within the meaning of Section 2(d) of the POCSO Act.

7. The evidence of the victim prima facie indicates that the Applicant had sexual relationship with the victim initially on 24.01.2017 and on several occasions thereafter. Subsequently she missed her menstrual cycle. The Applicant gave her the pregnancy kit and after the test was positive, gave her tablets to abort the foetus. When she told the Applicant that the pills did not work, he started avoiding the victim. The victim subsequently gave birth to a female child on 15.10.2017.

8. The evidence of PW 3 also prima facie indicates that she had suspected that the victim was pregnant and that on 14.08.2017 she took her to Dr. Pawaskar for medical examination. Upon examination, Dr. Pawaskar told her that the victim was pregnant. She has deposed that they contacted the Applicant. He initially denied, but later accepted that he had relationship with the victim.

9. PW7 Dr. Ninad, Radiologist in the hospital by name Nishkarsh Diagnostic Centre, has deposed that he had examined the victim on 19.08.2017 and as per the report she was 29 weeks pregnant. The pregnancy of the victim is also confirmed by PW8 Dr. Leena. She has deposed that she had examined the victim on 4.10.2017 and as per the report she was 36 weeks pregnant.

10. The evidence of the victim which is duly corroborated by medical evidence prima facie proves that the Applicant had subjected the victim, a child below 18 years of age, to repeated penetrative sexual assault, resulting in pregnancy and birth of a female child.

11. The offence is of serious nature. Considering the object of the POCSO Act and the societal interest, in my considered view this is not a fit case for suspending the sentence. Hence the Application is dismissed. However, considering the age of the Applicant, hearing of the Appeal is expedited. Appeal be listed on final hearing board in the week commencing from 17.01.2022.

(ANUJA PRABHUDESSAI, J.)