

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

**INTERIM APPLICATION NO. 231 OF 2020
IN
CRIMINAL APPEAL NO. 245 OF 2020**

Rajkumar Gajraj Yadav

... Applicant

Versus

The State of Maharashtra & Anr.

... Respondents

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Mr. Sandeep Mishra, Advocate for the Applicant/Appellant.

Ms. Poonam Ankleshwaria, Advocate for Respondent No.2.

Mr. S. R. Agarkar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 14th JULY, 2021.

PER COURT:

1. This is an application for suspension of sentence and grant of bail. The applicant is convicted for the offence punishable under Section 4 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') and sentenced to suffer rigorous imprisonment for ten years. He is also convicted for offence under Section 363 of Indian Penal Code (for short "IPC") and sentenced to suffer rigorous imprisonment for three years vide Judgment and order dated 5th November, 2019 passed by the District Judge and Additional Sessions Judge, Thane, in Special Case POCSO No. 252 of 2014.

2. The prosecution case is that the informant is the father of victim girl. The victim had left the house on 21st March, 2013 without informing anyone. She also took away amount of Rs.60,000/- from her house. She did not return home. Hence, missing complaint was lodged on 22nd March, 2013. The informant searched for his daughter at the house of relatives. She was not found. Subsequently, it was learnt that the accused was residing in front of their house had left his wife and his children at his native place 5 days prior to the incident and he was missing from his house. The complaint was lodged for offence under Section 363 of IPC. During the course of investigation it was revealed that the victim girl and the accused/applicant were residing together at Surat, State of Gujarat. The investigating officer then visited Surat and found that both of them resided in rented premises at Surat. The victim was pregnant. She was brought to Mumbai. The accused was arrested. He was charge-sheeted. The victim had delivered the child. The applicant/accused was prosecuted for the said offences and convicted.

3. Learned Advocate for the applicant submitted that during the trial, the applicant was on bail. The victim girl had eloped with the applicant. She had volunteered to be with applicant. They stayed together in rented premises at Gujarat. There is dispute about

the age of victim girl. The evidence on record is contradictory. There is no evidence to establish that the victim was minor at the time of commission of offence.

4. Learned APP submitted that the applicant was married person. He induced the victim to join him. She was taken to Gujarat. Both of them stayed together. The victim had conceived and delivered child.

5. Learned Advocate appointed for the complainant submitted that the victim was minor. Her consent is immaterial. The accused had preplanned the kidnapping. He has left his family to his native place. He was a married person. The victim was taken to Gujarat. He established physical relationship with her. The victim has delivered a child. She has been kept in some remand home. The evidence of the father of victim and victim is required to be considered. The statements of the victim, her father and the evidence brought on record would establish that the victim was below 16 years. Hence, the application for bail may be rejected.

6. The evidence on record would indicate that the applicant was the neighbour of the victim. The victim went missing from the house. Search was conducted. She was not found. The evidence of the victim indicates that she had accompanied the

applicant to Surat. She resided with the applicant for a period of about one year. She was pregnant for seven months. After learning about the fact that the victim and the applicant are residing together, police visited Gujarat. The accused was apprehended and the victim was brought to Mumbai. From the evidence of victim it is apparent that the victim had volunteered to be with applicant. The question which arises for consideration is whether the victim was minor at the time of incident. The cross examination of the victim also indicate that the accused had promised to marry with her. They have performed marriage in the temple. Learned counsel for the applicant urged that there is no cogent evidence to establish that the victim is minor. There is variation in the statements of witnesses. Although the register from the school indicates the date of birth, there is no evidence to show the date of birth noted in the register is supported by any material. The applicant was on bail during trial. The applicant has raised serious dispute about the age of the victim girl. Considering the aforesaid circumstances, sentence of imprisonment can be suspended and the bail can be granted to the applicant.

7. Hence, I pass the following order:

ORDER

- (i) Interim Application No. 231 of 2020 is allowed;

- (ii) Sentence of imprisonment awarded vide Judgment and order dated 5th November, 2019 passed by the District Judge and Additional Sessions Judge, Thane, in Special Case POCSO No. 252 of 2014 is suspended and the applicant is directed to be released on bail on executing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (iii) The applicant shall report trial Court once in three months on first Saturday of the month till further order;
- (iv) The applicant is permitted to furnish cash bail in the sum of Rs.25,000/- for a period of eight weeks in lieu of surety.
- (v) The requisite professional fees be provided to the learned Advocate appointed to represent the complainant.
- (vi) Interim Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)