

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

**INTERIM APPLICATION NO.1410 OF 2021
IN
CRIMINAL APPEAL NO.458 OF 2021**

MEGHA
S
PARAB
Digitally
signed by
MEGHA S
PARAB
Date:
2021.10.06
15:04:47
+0530

Kalpesh Haresh Tailor

...Applicant

Versus

The State of Maharashtra and Anr.

...Respondents

....

Mr. K.H. Holambe Patil for the Applicant.

Mr. S.V. Gavand, APP for Respondent No.1-State.

Mr. Sushan Mhatre for Respondent No.2.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 15th SEPTEMBER, 2021.

P.C.:-

This is an application under Section 389 of the Code of Criminal Procedure, 1973 for suspension of substantive sentence imposed by judgment dated 30/01/2021 passed by learned Distirct Judge-7 and Special Judge (POCSO) Act, Thane, in Special Case (POCSO) No.6 of 2018 and to enlarge the Applicant on bail.

2. By the said judgment, the Appellant (accused No.4) and four others have been held guilty of offences under Sections 366-A, 370(A) r/w 34 of the IPC. The Appellant is also held guilty of offences under Section 376 of the IPC and Section 3 and 4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO). The Applicant has been

sentenced to undergo rigorous imprisonment for a term of 5 years in respect of offence under Sections 363, 366-A, 370 (A) of the IPC. He is also sentenced to undergo rigorous imprisonment for 10 years and to pay fine of Rs.5,000/- i/d. to suffer rigorous imprisonment for one month for the offence punishable under Section 376 of the IPC and Section 3 of the POCSO Act.

3. Mr. K.H. Holambe Patil, learned counsel for the Applicant states that there is no evidence on record to prove that the Applicant had physical relationship with the victim. He further states that the victim was keen on earning money and wanted to go in modelling business. He states that the victim has accompanied several persons into hotels to earn quick money. He further states that the victim has not identified the Applicant as the person involved in the crime and that there is no evidence on record that the Applicant has physical relationship with the victim.

4. Per contra, Mr. S.V. Gavand, learned APP states that the evidence of the victim clearly indicates that she was below 18 years of age. This fact was known to the Applicant. He had prepared a forged Aadhar Card and that he had sexual intercourse with the victim, who was below 18 years of age. He submits that the offence is of serious nature and this is not a fit case for suspension of sentence and enlargement of

the Applicant on bail.

5. Perused the records and considered the submissions advanced by the learned counsel for the respective parties. The records prima facie indicate that the first informant had lodged the missing report on 02/09/2017 about the missing of the victim. The victim was traced at Pune and her statement was recorded by the Police on 09/10/2017 and 09/11/2017. The statements of the victim clearly indicated that the Applicant alongwith the other accused had pushed/forced the victim into prostitution despite knowing the fact that she was below 18 years of age. The statement of the victim also indicated that the Applicant herein had sexual relationship with her despite knowing that she was below 18 years of age. Hence crime was registered and the Applicant and others were tried for offences punishable under Sections 363, 366-A, 370(A), 376, 465 and 467 r/w. 34 of the IPC and Section 3 of POCSO Act. Learned Sessions Court after considering the evidence on record has held the Applicant guilty and sentenced him as stated above.

6. The evidence of the victim clearly indicates that she was born on 23/11/1999. Her birth certificate is on record at Exhibit-45. The evidence of the victim vis-a-vis birth certificate at Exhibit-45 reveals that the victim was born on 23/11/1999. The victim was doing

her BMM in Thakur College, Kandivali. She was interested in taking modelling as her career and contacted one Sachin from 'Flying Dreams' to pursue her dream. Said Sachin declined to help her since she was below 18 years of age.

7. The victim believed that she would require money to begin her journey as model. She therefore started searching for a job on the internet. In the process she got the number of the Applicant herein and contacted him. As per his instructions, she sent her photographs and copy of Aadhar Card to the Applicant. The Applicant called her about 4/5 days later at Boisar Railway station. He took her to Dahanu on his bike and thereafter took her to one lodge and had forcible sexual relationship with her. The Applicant thereafter sent the victim to the co-accused Babita, who took her to one chawl at Sakinaka. She took her photographs and sent them to Vinod. The victim has deposed that the Applicant prepared a forged Aadhar Card mentioning her name as Neeta Manoj Patil and showing her age as 24 years. The Applicant told her that he had prepared this Aadhar card to allow her entry in the lodge. The evidence of the victim further indicates that the Applicant and the other co-accused had sent her to several hotels and forced her into prostitution.

8. The material on record prima facie indicates that the victim

was below 18 years of age. The statement of the victim also prima facie indicates that the Applicant had sexual intercourse with her despite knowing that she was below 18 years of age. The Applicant prepared a forged Aadhar card showing the name of the victim as Neeta Manoj Patil and her age as 25 years. The material on record indicates that the Applicant and the other co-accused forced this young teenaged girl into the flesh tread. Suffice it to say that the sexual exploitation of children through prostitution is an insidious form of commercialised violence resulting in physical, psychological and social development. Considering the gravity of the offence and severity of the sentence, this is not a fit case to suspend the sentence and to release the Applicant on bail. Hence, the application is dismissed.

9. Mr. Sushan Mhatre, learned counsel was appointed to represent Respondent No.2, from legal aid panel. Fees as permissible, under the Rules be paid to the counsel for Respondent No.2.

(SMT. ANUJA PRABHUDESSAI, J.)