

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

**INTERIM APPLICATION NO. 1533 OF 2021
IN
CRIMINAL APPEAL NO. 507 OF 2021**

Ravi @ Ravikant Kuvarchand Kesarvani	 Appellant
v/s.	
The State of Maharashtra and anr.	Respondents

Mr. Aniket Vagal for the Appellant.
Mr. S.V. Gavand, APP for the State.
Mr. Jai Kanade a/w. Mr. Rahul Shivgavkar for Respondent No.2.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 07th OCTOBER, 2021.

P. C. :-

. This is an Application under Section 389 of Cr.P.C. for suspension of substantive sentence imposed by judgment dated 24/09/2019 in POCSO Special Case No.408/2015.

2. By the impugned judgment, the learned Special Judge under the Protection of Children from Sexual Offences (POCSO) Act, 2012, Greater Mumbai has held the Applicant guilty of offences under section 6 of POCSO Act, 2012 and 506(II) of the Indian Penal Code. He has been sentenced to undergo rigorous imprisonment for 15 years with

fine of Rs.20,000/- in default rigorous imprisonment for four months in respect of offence under section 6 of POCSO Act and rigorous imprisonment for one year with fine of Rs.5,000/- in default to suffer further rigorous imprisonment for one month for offence under Section 506(II) of the Indian Penal Code.

3. Heard Mr. Aniket Vagal, learned counsel for the Applicant, Mr. S.V. Gavand, learned APP for the State and Mr. Jai Kanade, learned APP for Respondent No.2. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

4. The Appellant herein was tried for offences under section 376(2), 506(II) of the Indian Penal Code and section 6 of POCSO Act and under Section 66-E of Information Technology Act, 2000. The crime against the Applicant was registered pursuant to the first information report lodged by the mother of the prosecutrix who was a fish vendor. The Applicant used to assist her in her work. It is the case of the first informant that the Applicant had committed penetrative sexual assault on her daughter. It was alleged that the Applicant had made a video clip and that he used to sexually abuse the prosecutrix under the threat

of circulating the said video on social media. The Applicant herein had denied having committed any crime. The learned Judge after considering the evidence adduced by the prosecutrix has recorded a finding that the prosecutrix was a minor and that the Applicant herein had committed penetrative sexual assault on the prosecutrix.

5. The evidence of PW2 prima facie indicates that the Applicant was known to the prosecutrix and that he had also proposed to marry her. The evidence of the prosecutrix prima facie reveals that they had indulged in sexual activity several times. She had stated that she had called the Applicant while she was at her maternal uncle's house. It was only when her mother learnt about the phone calls that the prosecutrix alleged that the Applicant had forcible sexual intercourse with her. She had alleged that the Applicant had prepared a video clip and sexually abused her under the threat of circulating the said video on social media. However, there is no evidence to that effect and the learned Judge has already acquitted the Applicant for offence under Section 66-E of Information Technology Act, 2000. The prosecutrix has admitted her photographs with the Applicant. Though she has claimed that the Applicant had taken the said photographs forcibly under the threat of circulating the same on social media, no such statement was

made in the statement to the police under Section 161 and 164 of the Cr.P.C.

6. The material on record prima facie reveals that the relationship was consensual. The prosecution has not placed on record the birth certificate or school leaving certificate of the prosecutrix to prove that she was below 18 years of age as on the date of the incident. The prosecution has relied upon the Ossification Test report wherein the medical officer has opined that the victim was 15 years of age. At this stage, the opinion of the medical expert cannot be considered to be conclusive and incontrovertible in nature. The methods used for estimating the age and the accuracy of estimation of age and/or validity of the Ossification Test Report will have to be considered on merits.

7. Considering the nature of the accusations and the 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) The substantive sentence imposed by judgment dated 24/09/2019 in POCSO Special Case No.408/2015 is suspended

pending hearing of the Appeal ;

(b) The Applicant is ordered to be released on bail on furnishing P.R. bond in the sum of Rs.20,000/- (Rupees Twenty Thousand only) with one or two sureties in the like amount to the satisfaction of the Trial Court ;

(c) The Applicant shall report to the Special (POCSO) Court once in six 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 an application seeking cancellation of bail.

8. The Interim Application stands disposed of in above terms.

PREETI
H JAYANI

Digitally signed by
PREETI H JAYANI
Date: 2021.10.14
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(SMT. ANUJA PRABHUDESSAI, J.)