

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****INTERIM APPLICATION NO. 2033 OF 2021****IN****CRIMINAL APPEAL NO. 1056 OF 2019**

Satyawan Yashwant Ghodake

... Applicant/Appellant

V/s.

The State of Maharashtra and Anr.

... Respondents

Mr. Nagraj S. Shinde for Applicant/Appellant.

Smt. Veera Shinde, A.P.P. for Respondent-State.

CORAM : A.S. GADKARI, J.

DATE : 8th DECEMBER, 2021.

PC. :

1. This is a successive application for bail in Appeal filed by the Applicant/Appellant.

2. Heard Mr. Nagraj Shinde, learned Advocate for the Applicant and Smt. Shinde, learned A.P.P. for the Respondent-State. Perused record.

3. Applicant has been convicted under Section 376(2)(i)(n) of the Indian Penal Code (for short, 'IPC') as well as under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act') and is sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs.10,000/-, in default of payment of fine to further suffer imprisonment for one month, by the learned Additional Session Judge, Solapur in Sessions Case No.197 of 2017 by its Judgment and Order dated 25th July 2019.

In view of section 42 of the POCSO Act, no separate sentence is imposed upon the Applicant for the offence punishable under Section 376(2)(i)(n) of IPC.

4. It is an admitted fact on record that, on the date of commission of offence i.e. on 11th April 2017, the prosecutrix was aged about 15 years and three months only and certainly below the age of 16 years. It is the allegation against the Applicant that, he took prosecutrix at a distant place and committed an offence as contemplated under Section 376 of IPC against her. The version of prosecutrix of sexual assault is duly corroborated by the version of PW-10 Dr. Pralhad P. Gaikwad. It further appears from the record that, the Applicant has failed to rebut the presumption as contemplated under Section 29 of the POCSO Act. In this brief premise, the observations made by the Trial Court in para No.35 that, the mitigating circumstance for awarding lessor sentence is that, the Appellant was aged about 31 years and the prosecutrix was less than 16 years of age and were having love affair can not be *prima facie* accepted. It is the settled position of law that, the consent of minor in such an offence is no consent at all in the eyes of law. The Applicant has been convicted by the Trial Court for an offence punishable under Section 6 of the POCSO Act.

5. In view of the above, I am not inclined to release the Applicant on bail.

Application is accordingly rejected.

[A.S. GADKARI, J.]