

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

**INTERIM APPLICATION NO. 2362 OF 2021
IN
APPEAL NO. 806 OF 2021**

Sagar Dilip Bhoye

..Applicant

v/s.

The State of Maharashtra & Anr.

..Respondent/s

Mr. Nitin Sejpai a/w. Pooja Sejpai for the Applicant.

Mr. P.H.Gaikwad, APP for the Respondent-State.

Ms. Priyanka Chavan, Advocate appointed for the Respondent No.2

**CORAM : SMT. ANUJA PRABHUDESSAI,
J.**

DATED : 23rd NOVEMBER, 2021.

P.C.

1. By this application, the applicant herein has sought suspension of sentence imposed vide judgment dated 01.07.2021 in Special Case (POCSO) No.385 of 2019. By the impugned judgment, the learned Special Judge (POCSO) has held the Applicant guilty of offence under Section 376(2) of IPC and Section 3 r/w. Section 4 of the Prevention of Children from Sexual Offence Act, 2012. He has been sentenced to undergo rigorous imprisonment for a period of 10 years with fine of Rs.5000/- in

default to undergo simple imprisonment for 3 months.

2. Heard Shri Sejpal, learned Counsel for the Applicant, Shri Gaikwad, learned APP for the State and Ms. Chavan, learned Counsel for the Respondent No.2. I have perused the record and considered the submissions advanced by the learned Counsels for the respective parties.

3. The case of the prosecution in brief is that on 3.10.2017, the Applicant herein had kidnapped the victim who was below 18 years of age, and subjected her to penetrative sexual assault, The evidence of the victim indicates that the Applicant was known to her. That on 3.10.2017, she had accompanied him to his house. It is her contention that the Applicant had sexual relationship with her under the promise of marriage. Though she claims that the Applicant had sexual intercourse with her against her will and consent, her evidence indicates that even after the incident she had stayed in the house of the Applicant. She had not informed her parents about the incident. Prima facie the relationship appears to be consensual and hence the moot question is whether

the victim was below 18 years of age. In this regard PW1 has deposed that her birth date is 15.05.2001, which fact was not stated in her statement under Section 161 Cr.P.C. that her date of birth was 15.05.2001. She has admitted in her cross examination that on the date of the deposition, which was recorded on 21.1.2001, she was 23 years of age. This admission prima facie indicates that she was born sometime in the year 1988 and falsifies her contention that she was born on 15.05.2001.

4. It is also to be noted that PW2, mother of the victim has stated that at the time of the incident her daughter was 15 years of age. She has not given the date of birth. In her cross examination she has admitted that the police told her that the crime could be registered against the Applicant only if the victim was below 18 years of age and hence she had stated that the victim was about 17 years of age.

5. PW3 Manik Kendra, the teacher in Zilla Parishad School has produced an extract of register wherein the date of birth of victim is shown as 24.09.2003. She has also produced an affidavit at

Exhibit 36, a perusal of which indicates that the mother of the victim had undertaken to submit the birth certificate of the victim within a period of one month. The evidence on record thus prima facie indicates that the date of birth in the school register was recorded on the basis of the information given by the mother of the victim who has stated before the Court that she does not know the exact date of birth of the victim. Hence, prima facie, there is discrepancy in the age as mentioned by the victim, her mother as well as the age recorded in the school records.

6. The relationship appears to be consensual and the evidence on record does not prima facie indicate that the prosecutrix was below 18 years of age and hence a child within the meaning of Section 2(d) of the POCSO Act.

7. Furthermore, it is stated that the Applicant was on bail during pendency of trial and he has not misused his liberty. Under the circumstances, in my considered view, this is a fit case of suspending the substantive sentence pending hearing of appeal. Hence the application is allowed on the following terms and conditions:-,

- i) Substantive sentence imposed against the Applicant by judgment dated 01.07.2021 in Special Case (POCSO) No.385 of 2019 is suspended pending hearing of the appeal;
- ii) 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;
- iii) The applicant shall report to the Trial Court once in two months on the day/ date specified by the Trial Court, till the Appeal is finally disposed on;
- (iv) 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.
- v) 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 application seeking cancellation of bail.

. Application is accordingly disposed of.

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(ANUJA PRABHUDESSAI, J.)