

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 2819 OF 2021
IN
CRIMINAL APPEAL NO. 232 OF 2020

Deepak Kumar Jivach Mandal

..Applicant

Vs.

The State of Maharashtra

..Respondent

MAMTA
AMAR
KALE

Digitally signed
by MAMTA
AMAR KALE
Date: 2021.11.26
14:03:27 +0530

Mr. Akhilesh Singh, for the Applicant.

Mr. S. R. Agarkar, for the Respondent / State.

CORAM : C.V. BHADANG, J.
DATE : 26 NOVEMBER 2021

P.C.

. This is an Application for suspension of sentence and for release of the Applicant on bail.

2. I have heard the learned counsel for the parties. Perused record.

3. The Applicant / Accused was tried for the offence punishable under Section 376 of IPC and Section 4 and 8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). The learned Special Judge has acquitted the Applicant from the offence

punishable under Section 4 and 8 of the POCSO Act on the ground that the prosecution has failed to establish that the victim (P.W.1) was a child on the date of the incident. The Applicant however has been convicted under Section 376 of the IPC and has been sentenced to suffer Rigorous Imprisonment for ten years with fine. The Applicant was on bail during the course of trial and has been taken into custody on 31 January 2020 when he was convicted.

4. According to the prosecution, the victim as well as the Appellant were working as a housemaid / servant in a 'Love-Kush Building', Vile Parle, Mumbai. They had developed acquaintance and intimacy. According to the prosecution, the Appellant had sexual relations with the prosecutrix on the pretext of marrying her. The record discloses that the prosecutrix conceived out of relations and delivered a stillborn baby.

5. Learned counsel for the Applicant submitted that the Applicant is innocent and in any event the relationship was consensual and the prosecution having failed to prove that the prosecutrix was a child, the nature of the relationship cannot partake of the nature of an offence under Section 376 of IPC.

6. Considering the over all circumstances and the fact that the Applicant was on bail during the course of trial, the following order is passed.

ORDER

1. The substantive sentence of imprisonment awarded to the Applicant is hereby suspended pending disposal of the Appeal subject to the Applicant furnishing a P.R. Bond in the sum of Rs.25,000/- with one or two solvent sureties in the like amount and on payment of fine, if not already paid.
2. The bail bonds to be furnished before the learned Sessions Judge.
3. The Criminal Application is disposed of in the aforesaid terms.

C.V. BHADANG, J.