

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO.1098 OF 2020
IN
CRIMINAL APPEAL NO.370 OF 2020**

Samadhan S/o Lotan Badgujar,
Age-38 years, Occu:Labour,
R/o-Pimpalkotha, Taluka-Erandol,
District-Jalgaon.

...APPLICANT

VERSUS

The State of Maharashtra
and another

...RESPONDENTS

...
Mr.Nilesh S. Ghanekar Advocate for Applicant.
Mr.S.D. Ghayal, A.P.P. for Respondent - State.
Mr.G.L. Deshpande Advocate appointed for informant.
...

**CORAM: SMT. VIBHA KANKANWADI AND
RAJESH S. PATIL, JJ.**

DATE : 23rd SEPTEMBER, 2022

ORDER :

1. Present Application has been filed for suspension of substantive sentence imposed in Special POCSO Case No.37 of 2016, by the learned Additional Sessions Judge, Jalgaon.

2. The learned Additional Sessions Judge, Jalgaon in Special

POCSO Case No.37 of 2016, by order dated 2nd June 2020, has convicted and sentenced the applicant thus:-

“(2) Accused Samadhan Lotal Badgujar is hereby convicted for the offence under section 302 of Indian Penal Code and sentenced to rigorous imprisonment for life and to pay a fine of Rs.20,000/- (Rs. Twenty Thousand only) in default of payment of fine the accused to suffer further imprisonment of six months.

(3) Accused Samadhan Lotan Badgujar is hereby convicted for the offence under section 363 of Indian Penal Code and sentenced to rigorous imprisonment for five years and to pay a fine of Rs.5,000/- (Rs. Five Thousand only) in default of payment of fine the accused to suffer simple imprisonment for two months.”

3. Heard Mr. Ghanekar, learned Advocate appearing for the applicant, Mr. Ghayal, learned APP appearing for the State and Mr. Deshpande, learned Advocate appointed for informant. Perused the copies of the depositions made available.

4. The prosecution story, in the nutshell, is that the informant is the mother of deceased. Deceased was 8 years old girl. Her father i.e. husband of the informant had expired and therefore, the girl as well as the informant were residing with the brothers of the informant, their wives and children. The accused is the

friend of her brother. On 14th May 2016 at about 6.00 p.m. when the informant and her brothers were not in the house, accused took the deceased along with children of the brothers of the informant for giving treat of *Lassi*. In all four children including deceased accompanied accused and as per the prosecution story, three were sent back by the accused, but the deceased was not allowed to go along with other children. When the girl did not return, the family searched and later on lodged a report about kidnapping. Then, after about four days i.e. on 18th May 2016 the dead body of the girl was found in the well at Pimprala village, by Police.

5. The prosecution has examined in all 23 witnesses to bring home the guilt of the accused. It will not be out of place to mention here that the learned trial Judge has acquitted the accused from the offence punishable under Sections 365, 366-A, 376(2)(f) & (i), 506 of the Indian Penal Code as well as Section 3 read with Section 4 of the Protection of Children from Sexual Offences Act.

6. The evidence of PW-23, the medical officer who conducted the autopsy would show that the body was highly decomposed and cause of death has been given as "asphyxia due to

drowning". From this aspect itself whether the death of deceased girl was homicidal in nature or not, is required to be revisited in the Appeal. Another aspect that is required to be noted is that based upon the testimony of the same witness, who had stated that due to decomposition of body it was not possible on examination of genital organs to state whether she was subjected to sexual assault, the same has been accepted by the learned Additional Sessions Judge, then when the concerned medical officer has not stated that the death was homicidal in nature, how the learned Special Judge / Additional Sessions Judge accepted the prosecution story about homicidal death, will have to be gone into.

7. Many witnesses appear to have turned hostile and some of them are formal in nature. PW-15 is the mother, informant but she was admittedly not present when deceased went along with the accused. PW-16, aunt (sister-in-law of PW-15) was at home and she says that the accused had taken the girl as well as other three children, for giving treat of *Lassi* to them, in her presence. PW-17 is the boy who was along with the deceased and had accompanied the accused. He had given his age as 15 years at the time of deposition. According to him, they had *Lassi* in one square of the Jalgaon city and thereafter he as well as other

siblings were asked to go home in an auto rickshaw. But then, when he asked accused to allow the deceased to accompany them, he says that accused threatened him to kill. Even for the sake of arguments it is accepted that till that point of time accused and deceased were together, but it is to be noted that the said square was from city of Jalgaon. The dead body is stated to have been found in a well from village Pimprala. It appears that the distance from Jalgaon to village Pimparala has not come and the girl was missing since 14th May 2016 and the dead body was found on 18th May 2016. PW-23, the medical officer has stated that considering the decomposed condition of body, in her opinion, the death had occurred more than 72 hours prior to time of postmortem. There is no other witness who has been examined by the prosecution on the point of 'last seen together'. How the accused had taken the girl to the said place, is another question. Therefore, when all these questions are being arisen, the applicant need not be asked to remain in jail till the conclusion of the Appeal, which would definitely take substantial time to come up for hearing. Though it appears that the accused was not released on bail throughout the trial, yet taking into consideration the evidence that has been led by the

prosecution, he deserves to be released on bail. Hence the following order:-

ORDER

(I) Application stands allowed.

(II) The substantive sentence imposed on the applicant in Special POCSO Case No.37 of 2016 by the learned Additional Sessions Judge, Jalgaon on 2nd June 2020 stands suspended till the final hearing and disposal of Criminal Appeal No.370 of 2020.

(III) The applicant – Samadhan S/o Lotan Badgujar be released on P.R. of Rs.1,00,000/-(Rupees One Lakh) with two solvent sureties of Rs.50,000/-(Rupees Fifty Thousand) each.

(IV) The applicant shall not commit any criminal activity.

(V) The applicant shall remain present before the learned Trial Judge once in six months, till final hearing and disposal of the Appeal, commencing from the date he tenders bail papers and thereafter, the Trial Judge to fix dates for his subsequent appearances.

(VI) In case of two consecutive defaults on the part of the applicant to remain present before the Trial Court,

the Trial Court to inform this Court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicant.

(VII) Bail before the Trial Court.

[RAJESH S. PATIL]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

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