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

**CRIMINAL APPLICATION NO. 2614 OF 2022
IN
CRIMINAL APPEAL NO.584 OF 2022**

Bapu Yashwantrao Jagtap ... Applicant

Versus

1. The State of Maharashtra
2. XYZ ... Respondents

AND

**CRIMINAL APPLICATION NO. 2615 OF 2022
IN
CRIMINAL APPEAL NO.584 OF 2022**

1. Deoba Daulat Paithane
2. Ashwini Deoba Paithane ... Applicants

Versus

1. The State of Maharashtra
2. XYZ ... Respondents

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Mr. N.S. Ghanekar, Advocate for the Applicants
Mr. R.D. Sanap, APP for Respondent No.1/State
Mr. M.M. Rapanwad, Advocate for Respondent No.2

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CORAM : SHRIKANT D. KULKARNI, J.

DATE : 07 SEPTEMBER 2022

PER COURT:-

. These are the applications for suspension of sentence
and bail filed by appellant No.1 and appellant Nos. 2 and 3.

2. Heard Mr. N.S. Ghanekar, learned counsel for the appellants, Mr. R.D. Sanap, learned APP for respondent No.1/ State and Mr. M.M. Rampanwad, learned counsel for respondent No.2/victim. Perused the impugned judgment and order of conviction passed in Special (POCSO) Case No. 199 of 2019.

3. Mr. Rampanwad, learned counsel for respondent No.2/ victim submitted that respondent No.2/victim is married with appellant No.1 Babu Jagtap. She is residing with her parents-in-law. Her husband also happen to be her relative.

4. Respondent No.2/victim along with her parents-in-law are present before the court. Parents-in-law also submitted before the court that respondent No.2/victim is residing with them. They assured that they would maintain her properly and would take care of her. The copy of the Aadhaar Card of the parents-in-law submitted by the learned counsel for respondent No.2 is taken on record.

5. Mr. Ghanekar, learned counsel for the applicants/appellants took me through the deposition of the victim PW-1. He pointed out there are no even suggestion to the victim about consensus sex or otherwise. He submitted

that there is no medical evidence to that effect. He also invited my attention to the deposition of PW-3 Dr. Pravinkumar Bora and submitted that there was no evidence of sexual assault. He submitted that appellant No.1 was on bail during the trial. After conviction, he has been taken into custody and put behind the bars. He submitted that appellant Nos. 2 and 3 are the parents of the victim, and they have been convicted under Section 10 of the Prohibition of Child Marriage Act. He submitted that the evidence of the victim plays an important role in this case. She has not supported to the prosecution case. She has turned hostile. Even by way of cross-examination, nothing is transpired to support the prosecution case and that too base a conviction. He submitted that the learned Special Judge completely overlooked this important aspect and convicted the appellants. He, therefore, urged to suspend the sentence and release the appellants on bail.

6. Mr. Sanap, learned APP for respondent No.1/State opposed to suspend the sentence and release the appellants on bail in view of conviction under Section 376 of the Indian Penal Code coupled with the provisions of the POCSO Act. However, he submitted that the victim and her parents-in-

law are present before the court and the court may interact with them in order to verify the position.

7. This court has interacted with the victim girl/respondent No.2 as well as parents-in-law, who are present before the Court. Respondent No.2/victim girl has been bold enough to state that appellant No.1 Bapu Jagtap is her husband. She married with Bapu Jagtap. She is residing with her parents-in-law in the matrimonial house. The parents-in-law also made a similar statement before this court. It is an admitted position that appellant No.1 Bapu Jagtap was on bail during the trial, and after conviction, he was taken into custody.

8. On perusing the important evidence of victim girl/PW-1, it would reveal that she has turned hostile and not supported to the prosecution case. *Prima facie*, there is no material in her evidence to attract Section 376 of the Indian Penal Code. On perusing the medical evidence i.e. PW-3 Dr. Bora, it would reveal that he did not find any external injuries or internal injuries except old healed scar on hymen. As such, the medical evidence is also not supporting to the prosecution case to attract Section 376 coupled with the provisions of POCSO Act regarding sexual penetrative assault. This is the

evidence referred above, on which the learned Special Judge has convicted appellant No.1, and sentenced to undergo 20 years imprisonment. It may not be proper to touch the merits of the matter. At this stage, suffice it to say that on careful scrutiny of the evidence of the PW-1 victim girl and the evidence of PW-3 Dr. Bora, it is difficult to accept finding recorded by the Special Judge, thereby holding appellant No.1 guilty under Section 376 of the Indian Penal Code coupled with the provisions of the POCSO Act. Appellant No.1 is married to the victim girl. They are in relation. Respondent No.2/victim girl is residing with her parents-in-law in a matrimonial house. There are no extraordinary circumstance to keep the appellant No.1 behind the bars. He was on bail during the trial.

9. So far as appellant Nos. 2 and 3 are concerned, they are parents of the victim girl. They have been convicted under Section 10 of the Prohibition of Child Marriage Act. No need to keep them behind the bars. They were also on bail during the trial.

10. It is submitted by Mr. Ghanekar, learned counsel for the applicants/appellants that all appellants have deposited their respective fine amount with the trial Court.

11. In the above background, the applications filed by the respective applicants/accused need to be allowed. They need to be enlarged on bail by suspending the sentence during the appeal period.

ORDER

- (i) Both the criminal applications are hereby allowed.
- (ii) The execution of substantive sentence passed against the appellants/accused in Special (POCSO) Case No. 199 of 2019 by the Special Judge (POCSO), Aurangabad is hereby suspended till final disposal of the appeal.
- (iii) The applicants/appellants (original accused Nos. 1 to 3) shall be released on bail on their furnishing P.R. bond of Rs.20,000/- (Rupees Five Thousand only) each, with one or two solvent sureties of the like amount by each of them on the following conditions :-
 - (a) They shall furnish their in detail address with Cell Number with the trial court
 - (b) Bail before the trial court.
- (iv) Both the criminal applications are accordingly disposed of.

[SHRIKANT D. KULKARNI]
JUDGE