

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

**INTERIM APPLICATION NO. 571 OF 2022
IN
CRIMINAL APPEAL NO. 163 OF 2022**

Sunny Sanjay Koli ...Applicant/Appellant

Versus

State Of Maharashtra And Anr. ...Respondents

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Mr. Kedar Patil with Ms. Gargi Joshi with Mr. Jitesh Mundhwa Advocate
for the Applicant/Appellant.

Ms. Ameeta Kuttikrishnan, Advocate for Respondent No.2.

Mr. A. R. Kapadnis, APP for the Respondent – State.

CORAM : PRAKASH D. NAIK, J.
DATE : 21st APRIL, 2022.

PER COURT:

1. The applicant is seeking suspension of sentence and grant of bail during the pendency of Criminal Appeal No.163 of 2022.

2. The applicant has been convicted for offences punishable under Section 376 of IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act'). He has been sentenced to suffer imprisonment of 10 years. He is acquitted for offences under Section 8 & 12 of POCSO Act.

3. The case of the prosecution is that on 8th August, 2019, the victim girl had left the house under the pretext of attending college. She did not return home. Inquiry was made with her friends, but she could not be traced. Complaint was lodged for offence under Section 363 of IPC alleging that the victim has been kidnapped by unknown person. Subsequently, she was traced. Her statement was recorded on 10th August, 2019. She stated that on 8th August, 2019 she left the house and called the accused. They met at Mangaon Phata. Both of them went to the hotel and waited there till evening. Thereafter, the accused took the victim to a lodge and hired the room premises by showing Aadhar Card. The accused had forcible sexual intercourse with her. On 9th August, 2019 the accused dropped her near her residence. The FIR was registered. Investigation was completed and the charge-sheet was filed. The prosecution examined three witnesses. The first informant is the father of victim girl (PW-2). He did not support the prosecution case. PW-1 is the victim girl. In her evidence she stated that she went to lodge with accused. She was subjected to sexual assault. On the next day she was dropped near her residence. The third witness is the Investigating Officer. The Medical Officer was not examined. The medical examination report is not on record.

4. Learned Advocate for the applicant submitted that the applicant was on bail during the trial. Relationship was of consensual nature. The applicant has not misused the facility of bail. The age of the victim was not proved. Birth Certificate was produced by Investigating Officer. Contents of the said document were not proved.

5. Learned APP submitted that the victim was minor. There is no effective cross examination relating to the age of the victim by accused. The birth certificate is public document. There is sufficient evidence against the applicant.

6. Learned Advocate for respondent No.2 supported the submissions of learned APP. It is submitted that the prosecution has established that the victim was minor. The victim had stated that she was subjected to forcible sexual assault. It was not consensual act.

7. Undisputedly, the applicant was on bail during the trial. There is no adverse report about misuse of facility of bail. From the tenor of evidence of the victim and other circumstance on record it appears that the relationship was consensual. The accused was called by the victim girl. Both of them went to the hotel and thereafter to a lodge. They stayed in the lodge at night.

On the next day she was dropped by accused near her residence. The father of the victim girl had not supported the prosecution case. The defence has challenged the veracity of the document relating to the birth of victim.

8. Considering these circumstances, case for suspension of sentence and grant of bail is made out.

9. Hence, I pass the following order:

ORDER

- i.** Interim Application No. 571 of 2022 is allowed;
- ii.** During the pendency of Criminal Appeal No.163 of 2022, the sentence of imprisonment imposed vide Judgment and order dated 03rd January, 2022 passed by learned Special (POCSO) Judge, Ichalkaranji in Special POCSO Case No.20 of 2019 is suspended and the applicant is directed to be released on bail on executing P.R. Bond in the sum of Rs.20,000/- with one or more sureties in the like amount;
- iii.** The applicant is permitted to furnish cash bail in the sum of Rs.20,000/- for a period of eight weeks in lieu of surety.
- iv.** The applicant shall attend the trial Court once in six months on first Saturday of the month till the final disposal of the appeal;

v. In the event, there are two consecutive defaults in attending the trial Court, the said fact may be brought to the notice of this Court and in such eventuality, the prosecution will be at liberty to prefer an application for cancellation of bail.

vi. The applicant shall not cause any harassment to the victim girl.

vii. Interim Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)