

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

INTERIM APPLICATION NO. 1306 OF 2021

IN

CRIMINAL APPEAL NO. 397 OF 2021

Rajeevkumar Harishankar Singh ... Applicant

Versus

The State of Maharashtra & Anr. ... Respondents

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Mr. Shreyas P. Barsawade for the Applicant.
Ms. Priyanka Chavan appointed for Respondent No. 2.
Mr. S. S. Hulke, APP for the State.

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**CORAM : S. S. SHINDE AND
SURENDRA P. TAVADE, JJ.**

RESERVED ON : 03rd DECEMBER, 2021
PRONOUNCED ON : 10th JANUARY, 2022

P.C. :

. The Applicant is claiming for suspension of sentence and for bail. The Applicant was tried for the offences punishable under Sections 363, 366-A, 376, 506 of the Indian Penal Code (“IPC” for short) and under Section 4 of Protection of Children from Sexual Offences Act (“POCSO” for short), 2012 .

2. The Additional Sessions Judge was pleased to held the Applicant guilty for the offences punishable under Sections 363, 366-A, 376, 506 of I.P.C and under Section 4 of POCSO Act. The Applicant has been convicted and sentenced to undergo RI for life, which shall mean imprisonment for the remainder of his natural life for the offence punishable under Sections 376 (2) (f) (k) of I.P.C. and Section 4 of POCSO Act, 2012. He was convicted for the offence punishable under Section 363 of I.P.C and to undergo RI for three years and to pay fine of Rs.5,000/-, in default, shall further RI for one month. He also convicted for the offence punishable under Section 366-A of I.P.C and sentenced to RI for three years and to pay fine of Rs.5,000/-, in default, shall suffer further RI of one month. The Applicant held guilty under Section 506 of I.P.C and sentenced to suffer RI for two years along with fine of Rs.5,000/-.

3. It is alleged by the prosecution that the mother of the victim lodged the FIR on 27th May, 2016 *inter alia* alleged that her daughter was abducted by unknown person on 25th May, 2016. On the basis of the FIR, crime was registered against the unknown person. The Investigating Officer obtained the cell number of the victim on the basis of CDR/SDR and the location of the victim, was traced at Surat (Gujrat). Accordingly, the Investigating Officer reached to the spot and apprehended the victim and the Applicant. The Applicant was arrested on 15th June, 2016. The statement of the victim was recorded under Section 164 of Cr.P.C before the Special Court. The

victim gave her date of birth as 20th November, 1999. The victim was working in Farsan Factory at Peth-Vadgoan. The Applicant was a Manger of the said factory. The Applicant developed intimacy with the victim and told her that he likes her. The victim protested such behavior of the Applicant and told him that she was too young. She refused the proposal made by the Applicant. It is alleged that the Applicant was forcefully searching occasions to speak to the victim for developing intimacy with her. One day at about 2:00 p.m., the Applicant told the victim that he has some work with her and he brought her to a construction site on motorcycle. The Applicant told the victim that he likes her and he asked to marry her. Thereafter, the Applicant embraced her and kissed her. The victim prevented him from further acts. Thereafter, both of them returned to the factory. The Applicant threatened not to disclose the incident to anybody. It is further alleged that on 19th May, 2016, the victim stayed with her maternal aunt. The Applicant came to know the said fact and he called the victim in the said night and took her in the cabin of paper factory located near the house of the maternal aunt of the victim. The Applicant allegedly committed penetrative sexual intercourse with the victim in the said cabin. The maternal aunt and cousin woke up, at that time, the victim has not been found in the room. The maternal aunt and cousin of the victim reached near the paper factory at mid night and noticed a light in the cabin of paper factory. The cousin of the victim knocked the door, but nobody opened the door, therefore,

he peeped inside the cabin. After opening of the door of cabin, the Applicant ran away. The victim disclosed her aunt that the Applicant committed sexual intercourse with her. The said information was given to the mother of the victim, thereafter, brother and more relatives, arrived at Peth-Vadgaon and then took the victim to their village. Thereafter, the victim joined her duty in the Farsan Factory as usual.

4. It is alleged that on 25th May, 2016 the Applicant called the victim outside the house and accordingly victim went out of the house. The Applicant was waiting for her on the road. The Applicant took the victim to village Wathar on motorcycle and thereafter, proceeded to the Satara by bus, thereafter, both of them came to Surat (Gujrat). The Applicant got job as a watchman at Surat. The Applicant resided at Surat along with the victim from 25th May, 2016 to 14th June, 2016. Thereafter, the Applicant came to be arrested and the victim was rescued. The statement of the victim was recorded under Section 164 of Cr.P.C. The statements of the witnesses were recorded. After completion of investigation, the charge-sheet came to be filed against the Applicant for the offences mentioned above.

5. To prove the charge against the Applicant, the prosecution has relied on the evidences of twelve witnesses including the victim, her mother, maternal aunt, her cousin, panch witnesses, Medical Officer, Head Master, Investigating Officer, etc. On the basis of the evidence on record, the trial Court convicted the Applicant for the offences as

mentioned above.

6. It is contended that the prosecution has failed to prove the age of the victim. It is contended that the Applicant was above age of 18 year at the time of alleged incident. It is contended that if the evidence of the victim is read as it is, she is consenting party to the sexual intercourse. It is contended that the trial Court has not appreciated the evidence on record in proper perspective and has come to incorrect conclusion. It is contended that there is no possibility of early hearing of the appeal, therefore, the Applicant prays for suspension of the sentence and bail during the pendency of the appeal.

7. Heard learned Counsel for the Applicant, the victim and the learned APP for the Respondent-State.

8. On going through the evidence of the victim it appears that the prosecution case divides into three parts. The first part is that the incident allegedly occurred on a construction site few days prior to 19th May, 2016. The Second part of sexual assault made by the Applicant on the victim in the intervening night of 19th May, 2016 to 20th May, 2016 in the cabin of the paper factory of PW-3. The third part of the prosecution related to kidnapping of the victim is on 25th May, 2016 to Surat (Gujrat). The victim has elaborately given the evidence on the third part of story of the prosecution.

9. The core question raised by the Applicant is that the prosecution has failed to prove age of the victim. On going through the evidence of the victim, she deposed that her date of birth is 20th November, 1999. Similarly, her mother deposed that the victim born in the month of Shravan, 1999. The said evidence is not at all disputed by the defense in the cross-examination of the victim as well as her mother.

10. The prosecution has laid on the evidence of Head Master Mr. Ramrao R. Patil (PW-8). He produced on record bonafide certificate of the victim, on the basis of general register maintained by the school. Admittedly, the victim had taken admission in the Vadgaon Vidyalay on 14th July, 2012 and she left the school on 31st January, 2015. So it cant be said that, on the basis of the School Leaving Certificate issued by earlier school Headmaster Mr. Ramrao Patil (PW-8) recorded the date of birth of the victim as 20th November, 1999. On the basis of the above facts, learned Counsel for the Applicant submits that the prosecution has not laid on primary evidence of age of the victim. He submits that the prosecution has heavily relied on the bonafide of the victim issued by Head Master Mr. Ramrao Patil (PW-8). The result of ossification test shows that the victim is above age of 18 year, therefore, trial Court ought to have accepted the result of ossification test, which determines age of the victim. The trial Court has considered the evidence of the victim, her mother, Head Master Mr. Ramrao Patil and the documents produced by him. On going through

the evidence it appears that the prosecution has established the age of the victim. No doubt that the said evidence is required to be re-appreciated in the appeal, but it cannot be said that the findings recorded by the trial Court is not proper and correct.

11. The trial Court has applied the presumption under Section 29 of the POCSO Act. The Applicant is married person having children. He was a Manager of the factory, where victim was serving. In view of the said facts, it would not be just and reasonable to enlarge the Applicant on bail. At this stage, on going through the evidence on record and perusal of the judgment of the trial Court, it appears that the Applicant is not entitled for bail during pendency of the appeal. Hence, we pass the following order:

ORDER

- 1) The present Interim Application is rejected.
- 2) The observations made hereinabove are *prima facie* in nature and confined to the adjudication of the present application. Hearing of the appeal stands expedited.

(SURENDRA P. TAVADE, J.)

(S. S. SHINDE, J.)