

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

**INTERIM APPLICATION NO. 636 OF 2022
IN
CRIMINAL APPEAL NO. 229 OF 2020**

Omkar Dattatray Dangat ...Applicant/Appellant
Versus
The State Of Maharashtra & Anr. ...Respondents

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Mr. Adwait Bhonde, Advocate for the Applicant/Appellant

Mr. Prosper Disouza, Advocate for Respondent No.2.

Mr. Arfan Sait, APP for the Respondent – State.

CORAM : PRAKASH D. NAIK, J.
DATE : 26th APRIL, 2022.

PER COURT:

1. The applicant is seeking suspension of sentence and grant of bail during the pendency of Criminal Appeal No.229 of 2020.

2. The applicant has been convicted by the Court of learned Additional Sessions Judge, Pune vide judgment and order dated 9th July, 2019 for offence punishable under Section 363 of Indian Penal Code (for short “IPC”) and sentenced to suffer rigorous imprisonment of three years. He is also convicted for offence under Section 366-A of IPC and sentenced to suffer rigorous imprisonment of five years. He is further convicted for

offence under Section 376(2)(n) of IPC r/w Sections 4 & 6 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') and sentenced to suffer rigorous imprisonment of ten years and to pay fine of Rs.10,000/-.

3. The case of the prosecution is that the victim girl was acquainted with the accused. She was subjected to forcible sexual intercourse by the accused. She was pregnant. After it was noticed that the victim was pregnant, First Information Report (for short "FIR") was registered. The accused was arrested. Investigation proceeded and charge-sheet was filed.

4. Learned Advocate for the applicant submitted that the applicant is in custody for a period of about 6 years and 8 months. The applicant has been falsely implicated in this case. The relationship between the accused and the victim girl was of consensual nature. There has been substantial delay in reporting the incident and lodging the FIR. The victim girl had accompanied the accused on several occasions and as per her evidence there was physical relationship between them. Subsequently, it was alleged that she was forcibly subjected to sexual assault. For convicting the accused under the provisions of POCSO Act, the prosecution is required to establish the age of the victim and she is minor at the

time of incident. The birth certificate was produced by the victim girl for the first time while recording her evidence. There is no other corroborative evidence about the source of the birth certificate. No other person from the office, from where the birth certificate was obtained has been examined by the prosecution. The appeal may not reach for final hearing immediately. There are several discrepancies in the evidence of the prosecution witnesses. In similar case this Court had suspended the sentence of imprisonment. He relied upon the order passed in the case of Tukaram Sadanand Palav V/s. State of Maharashtra in Criminal Application No.1151 of 2019 decided on 16th February, 2021.

5. Learned APP submitted that, it is proved by the prosecution that the victim was minor. The birth certificate of the victim was not disputed. There was no cross examination in that regard. The birth certificate was collected during investigation by Investigating Officer. The victim was minor at the time of incident. Assuming that there was love affair between the victim and the accused, considering the fact that the victim was minor, the consent is immaterial. The consent was obtained by deceit. The victim has deposed that she was assaulted, threatened etc. The birth certificate was issued by the Municipal Corporation. It is genuine

document. Hence, no case is made out for suspension of sentence of imprisonment.

6. Learned counsel for Respondent No.2 made similar submissions. It is submitted that the victim was minor at the time of incident. There is sufficient evidence to prove that the applicant has been convicted for offence punishable under Section 376(2)(j) of IPC. The victim was incapable of giving consent, since she was minor.

7. He relied upon the decision of the Hon'ble Apex Court in the case of *'X' (Minor) V/s The State of Jharkhand* delivered in Criminal Appeal No.263 of 2022 arising out of SLP (Cri) No. 9317 of 2021.

8. Undisputedly, the applicant is in custody for a period of about 6 years and 8 months. The victim has admitted in her evidence that there was friendship between her and the accused. It was converted into love affair. The accused had proposed her. In October – 2014, the accused took her to Kothrud and maintained physical relationship with her. She has stated that she was not willing for such relationship. The evidence discloses that there was physical relationship between them. She had not told this fact to her parents. The FIR was registered after it was noticed that the

victim was pregnant. The prosecution is relying upon the birth certificate produced by the victim girl while recording her evidence. According to defence source of said document is not established. No person from the office from which the birth certificate was obtained has been examined by the prosecution. Appeal may not be heard immediately. All these aspects will have to be considered. From the nature of evidence and the fact that the applicant is in custody for a period of about 6 years & 8 months, case for suspension of sentence and grant of bail is made out.

9. Hence, I pass the following order:

ORDER

- i. Interim Application No. 636 of 2022 is allowed;
- ii. During the pendency of Criminal Appeal No.229 of 2020, the sentence of imprisonment imposed vide Judgment and order dated 9th July, 2019 passed by learned Additional Sessions Judge, Pune in Special Sessions Case No.371 of 2015 is suspended and the applicant is directed to be released on bail on executing PR. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- iii. The applicant is permitted to furnish cash bail in the sum of Rs.25,000/- 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 or shall not approach to the family members of the victim girl.

vii. The applicant shall not enter into vicinity of the residence of the victim girl.

viii. Interim Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)