

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

**INTERIM APPLICATION NO. 725 OF 2022
IN
CRIMINAL APPEAL NO. 218 OF 2022**

Farukh Rashid Khan ..Applicant/Appellant
Versus
The State of Maharashtra & Anr. ..Respondents

Mr. Anjali Patil, Advocate for the Applicant/Appellant.
Ms. Manisha Deokar, Advocate for the Respondent No.2.
Ms. P. N. Dabholkar, APP for the State.

**CORAM : PRAKASH D. NAIK, J.
DATE : 11th APRIL, 2022.**

PC.

1. The applicant is convicted for the offence under Section 376(2)(n) of Indian Penal Code (for short “IPC”) and sentenced to suffer rigorous imprisonment for ten years. He is also convicted for the offences under Sections 341, 328 and 506-II of IPC and sentenced to suffer imprisonment of one month, ten years and seven years respectively. He is also convicted of the offence under Section 3 r/w Section 4(2) of Protection of Children from Sexual Offences Act, 2012 (for short “POCSO”). He is also convicted under section 5(j)(ii) (1) r/w Section 6 of POCSO and sentenced to suffer imprisonment for ten years. He is convicted for offences under Section 7 r/w 8 of

POCSO, under Section 11 r/w Section 12 of POCSO and sentenced to suffer rigorous imprisonment for three years on each count.

2. Learned Advocate for the applicant submitted that, the applicant cannot be convicted under Section 3 r/w 4(2) of POCSO, since the said provision came into force on 06.07.2019. The alleged incident had occurred in December-2013. The age of the victim is disputed. The applicant was on bail during the trial. There was love affair between the victim and the accused. The applicant was aged about 20 years at the time of incident. The relationship was consensual. There is no misuse of facility of bail.

3. Learned APP submitted that, victim was aged around 15 years and 6 months at the time of incident. The age was proved. Head Master of the school was examined. The trial Court has dealt with all the aspects. The offences are proved.

4. Learned Advocate for respondent No.2 supported the submissions of learned APP. It is submitted that there is sufficient evidence against the accused. The victim was minor. The DNA report supports the prosecution case. The applicant has been convicted on the basis of evidence.

5. The applicant was granted bail by this Court during the pendency of trial by order dated 24.02.2015. One of the ground for bail is that the call details record showed that from 01.02.2014 till 07.07.2014, the accused and the victim were regularly in touch with each other on Cell Phone. There were several calls made to the accused by victim. It is apparent that there was love affair between victim and accused. There is no adverse report about misuse of facility of bail. The age of the victim girl claimed by prosecution is disputed by the accused. The victim has admitted that there was friendship with the accused. The prosecution case is that the accused had visited her house. She had gone with him on his vehicle. She was allegedly taken in the room. The accused sprayed something in front of her. She was unconscious. When she gained consciousness, she found that her clothes were not on her person. She did not divulge the incident to anybody as she was scared. The victim again went with the accused due to threats by him and she was subjected to sexual intercourse. This had happened two to three times. It was found that she was pregnant. Thereafter, the FIR was lodged. The victim has admitted that she did not inform the incident to her

mother till she was pregnant. From the evidence it appears that the victim and applicant / accused were closely acquainted with each other.

6. Considering the aforesaid aspects, the sentence of imprisonment can be suspended.

7. Hence, I pass the following order:-

ORDER

- i.** Interim Application No. 725 of 2022 is allowed;
- ii.** The sentence of imprisonment imposed vide Judgment and order dated 20.12.2021 passed by learned Additional Sessions Judge, Panve Raigad in Special (POCSO) Case No. 46 of 2019 is suspended.
- iii.** The Applicant is directed to be released on bail on executing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount.
- iv.** 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.
- v.** The Applicant shall attend the trial Court once in six months on first Saturday of the month till the final disposal of the Appeal;
- vi.** 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.

vii. The Applicant shall not approach the victim. He shall not cause any harassment to the victim.

viii. Interim Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)