

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

**INTERIM APPLICATION NO.861 OF 2022
IN
CRIMINAL APPEAL NO.262 OF 2022**

Ranjit Ashok @ Balaso Deshmukh .. Applicant/Appellant
Versus
State of Maharashtra and Anr. .. Respondents

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Mr.Datta Mane a/w. Mr.Sanjali Bidwe and Mr.Ashok Yadav, Advocate
for the Applicant/Appellant.

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

Mr.Amit Mane, Advocate for Respondent No.2.

Mr.K.P. Tavalkar, Karad City Police Station, Present.

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CORAM : PRAKASH D. NAIK, J.

DATED : APRIL 22, 2022.

P.C. :

This is an application for suspension of sentence and grant of bail during the pendency of criminal Appeal No.262 of 2022.

2 The applicant is convicted *vide* judgment and order dated 11th February, 2022, by Extra Joint Additional Sessions Judge, Karad, for the offence under Section 376 of Indian Penal Code (“IPC”, for short) and Section 3(a) punishable under Sections 4 and 5(j)(ii) punishable under Section 6 of Protection of Children From Sexual

Offences Act, 2012 ("POCSO Act", for short). He has been sentenced to suffer imprisonment of 10 years and fine of Rs.10,000/-, for conviction under Section 376 of IPC. He is sentenced to suffer 7 years of imprisonment and fine of Rs.10,000/-, for conviction under Section 3(a) punishable under section 4 of POCSO Act with fine of Rs.10,000/-. He is also convicted for the offence under section 5(j)(ii) punishable under Section 6 of POCSO Act, and sentenced to suffer imprisonment of 10 years and fine of Rs.10,000/-. He has been acquitted for the offence under Sections 363 and 366 of IPC. All the sentences are directed to run concurrently.

2 The case of the prosecution is that on 11th July, 2019, the victim had visited Nursing Home. At that time, it was found that she was pregnant. Information was given to the police. The statement of the victim girl and other witnesses were recorded. The victim was studying in 12 standard. The accused is resident of same area. He is related to the victim. The victim was knowing the accused since childhood. They developed intimacy. The accused took the victim in Kas-Pathar. He hired a room at resort. The accused represented that he will perform marriage with the victim and had forceful sexual intercourse with her. The FIR was registered.

3 Learned advocate for the applicant submitted that the relationship between the accused and victim was of consensual nature. The applicant was willing to marry the victim girl. Engagement ceremony between the victim and the accused was performed. On account of some reasons the marriage could not be performed. The prosecution has not proved that the victim was minor at the time of incident. The victim had not disclosed the incident to her parents immediately after the incident. The applicant is working in army. He was on anticipatory bail during the trial. There was no misuse of facility of bail granted to him. It is not the case of the victim that the accused had subjected her sexual intercourse under the false promise of marriage. The applicant is willing to marry victim girl. She is major.

4 Learned APP submitted that the victim was subjected to sexual assault under force. Assuming that the relationship was of consensual nature, the victim was minor at the time of incident. The age of the victim has not been disputed by the accused. She was below 18 years. The documentary evidence establishes the age of the victim. When the victim had approached the Nursing Home for medical examination, it was noticed that she was pregnant, and, hence, information was given to police. The consent is immaterial since the

victim was minor. Statement of the accused recorded under Section 313 of Cr.P.C., is silent about consensual relationship. Whenever question of grant of bail arises, the accused takes a stand that the victim and the accused were in relationship and that he is willing to marry the victim girl. While on bail, the applicant never took any steps to perform marriage with the victim girl. While granting anticipatory bail, the applicant has urged that the relationship was of consensual nature. Although, he was on anticipatory bail, there was no steps from his side for performing marriage, which indicate that he has no intention to perform marriage. Since he has been convicted, the applicant has again contended that he is willing to marry the victim girl. The evidence of witnesses and the medical evidence supports the prosecution case.

5 Learned advocate for respondent no.2 submits that the date of birth is spelt out in the evidence of the victim. The promise of marriage is not fulfilled by the accused. He has sufficient time to perform marriage. The victim was subjected to sexual assault. On instructions, it is submitted that in view of the conduct of the applicant, the victim girl is not willing to perform marriage with him.

6 The FIR was registered since Doctors from the nursing

home gave intimation to the police after examining the victim girl, when it was found that she was pregnant. The victim (P.W.1) in her evidence has stated that the accused is known to her. There was love affair between them. On 1st April, 2019, the accused took her to a hotel. Both stayed in the room at resort. In spite of opposition, the accused committed sexual intercourse with her by saying that he would perform marriage with her. Subsequently, it was noticed that she was pregnant. Her statement was recorded by police. In the cross-examination, she stated that she had not informed the incident to her parents till she was admitted in hospital. Her engagement was performed with the accused after the incident. Her family was aware that she was on talking term with the accused. The family members did not object for the same. The accused is serving in the Indian Army prior to the said allegation. The accused was not getting leave for a year. Her family members had informed the accused that her grandmother has died, and, therefore, her marriage will not be performed for one year. Since she was taking education, her marriage was postponed. She had deposed before the J.M.F.C. as per the say of the police. She has no grievance against the accused. There was no force and the accused did not act against her will at the time of alleged incident. She was having understanding capacity and she knew the consequences of the alleged act in 2019. She did not file any complaint

of the alleged incident till she was admitted in the hospital.

7 From the tenor of the evidence of P.W.1, it is apparent that the marriage was postponed on account of the reasons stated by her. She has also stated that she has no grievance against the applicant, and, that she had the knowledge of the consequences of the act. She has stated before the J.M.F.C. that after completing 18 years of the age, she would marry with the accused, but, she could not perform the marriage with the accused after completing 18 years since her grandmother had expired and one year was not completed after death of her grandmother. She do not know whether the accused is willing to marry her, however, she is ready to marry him. From the tenor of her deposition, it is apparent that the relationship was of a consensual nature. The applicant was on anticipatory bail during the trial. There is no adverse report of misuse of facility of bail. Hence, the sentence of imprisonment can be suspended and bail can be granted to the applicant.

8 Hence, I pass the following order:

:: ORDER ::

- (i) Interim Application No.861 of 2022, is allowed;

- (ii) The sentence of imprisonment imposed *vide* judgment and order dated 11th February, 2022, by Extra Joint Additional Sessions Judge, Karad, in Special Case No.37 of 2020, is suspended and 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;
- (iii) Applicant/appellant is permitted to furnish cash bail security of Rs.25,000/-, for a period of eight weeks, in lieu of surety;
- (iv) Applicant/appellant shall attend the trial Court once in six months on first Saturday of the month, till disposal of Appeal;
- (v) Interim Application No.861 of 2022, stands disposed of accordingly.

(PRAKASH D. NAIK, J.)