

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

**INTERIM APPLICATION NO.1140 OF 2022
IN
CRIMINAL APPEAL NO.355 OF 2022**

Prashant Ashok Sarwade Applicant

versus

State of Maharashtra & Anr. Respondents

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- Mr. Sujay H. Gangal, Advocate for Applicant.
- Smt. J. S. Lohokare, APP for the State/Respondent.
- Ms. Savita M. Yadav, Appointed Advocate for Respondent No.2.

**CORAM : SARANG V. KOTWAL, J.
DATE : 12th AUGUST, 2022**

P.C. :

1. In the earlier order dated 18/07/2022 it is mentioned that the father of the victim is absconding and the mother of the victim is served.

2. Learned counsel is representing her through legal aid panel. Therefore the learned counsel for the Applicant is directed to remove the name of the father of the victim and

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instead mother of the victim shall be made as a party. She shall be mentioned as 'XYZ'. Her identity should not be disclosed. Amendment to be carried out forthwith in the application as well as in the Appeal.

3. Heard Mr. Sujay H. Gangal, learned counsel for the Applicant, Smt. J. S. Lohokare, learned APP for the State and Ms. Savita M. Yadav, Advocate for Respondent No.2.

4. The Applicant was convicted for various offences as follows :

(1) He was convicted for the offence punishable u/s 376 of the Indian Penal Code and u/s 6 of the Protection of Children from Sexual Offences Act, 2012, and was sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs.20,000/- and in default to suffer simple imprisonment for three months.

(2) He was also convicted for the offence punishable u/s 363 of the Indian Penal Code and was

sentenced to suffer rigorous imprisonment for 3 years and to pay a fine of Rs.5,000/- and in default to suffer simple imprisonment for one month.

5. He was acquitted from the charges of offence punishable u/s 506 of the Indian Penal Code. All the sentences were directed to run concurrently. He was given set off u/s 428 of Cr.P.C. Thus maximum sentence awarded was 10 years.

6. Learned counsel for the Applicant submitted that the date of birth of the victim is not properly proved. The medical evidence shows that she could be between 17 and 19 years of age at the relevant time. It means that there is a strong possibility of she being more than 18 years of age at the time of incident. He submitted that her deposition indicates that it was a consensual relationship. She had on her own eloped with the Applicant and had got married and therefore no offence is made out.

7. Learned APP and learned counsel for Respondent No.2 opposed this application. They submitted that the date of birth is proved with the birth certificate as well as from the school record. Her date of birth is 12/10/1999 and the date of incident is 22/08/2016. Thus she was below 18 years of age. Therefore all the contentions raised by the learned counsel for the Applicant do not survive.

8. I have considered these submissions. I have perused the deposition of the victim. She has stated that her date of birth is 12/10/1999. The Applicant was residing in her neighbourhood. On 22/08/2016 the Applicant came to her college. He threatened her and therefore out of fear she accompanied him. It is her case that she was taken to Hadapsar and he forcibly put Mangalsutra. Thereafter they stayed in his friend's house. Once they were alone, he committed forcible sexual intercourse by threatening her. That was repeated on many occasions. Thereafter she was taken to Solapur and even there he established forcible physical relations with her. After

that the police took her to Dattawadi police station. Because of their relations, she delivered a child, which was kept in a shelter home.

9. In the cross-examination she was shown photographs of her marriage with the Applicant. She denied the suggestion that she herself had forced the Applicant to elope. She admitted that when she was being taken away, she did not make any grievance or did not raise any shouts nor made any complaint with the Applicant's friend in his house where they were residing.

10. All these issues will have to be decided during the final hearing of the Appeal. However, considering the clear and specific case in the examination-in-chief it does appear that the offence is made out and therefore considering the seriousness of offence and maximum sentence of 10 years, no case for grant of bail is made out. The application is rejected.

(SARANG V. KOTWAL, J.)