

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

**INTERIM APPLICATION NO. 1177 OF 2022
IN
CRIMINAL APPEAL NO. 370 OF 2022**

Brijesh Phulsing Parihar ...Applicant/Appellant
Versus
The State Of Maharashtra And Anr. ...Respondents

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Mr. S. S. Kharat, Advocate for the Applicant/Appellant.

Ms. B. Sharada, Advocate for Respondent No.2.

Ms. P N. Dabholkar, APP for the Respondent – State.

CORAM : PRAKASH D. NAIK, J.
DATE : 5th MAY, 2022.

PER COURT:

1. This is an application for suspension of sentence and grant of bail during the pendency of Criminal Appeal No.370 of 2022.

2. The applicant has been convicted vide judgment and order dated 19th January, 2022 for offence punishable under Section 376 of Indian Penal Code (for short “IPC”) and Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short ‘POCSO Act’) and sentenced to suffer imprisonment of 10 years and to pay fine of Rs.25,000/-.

3. The case of the prosecution is that the victim was acquainted with the accused. She eloped with the accused. The

complaint was lodged on 6th November, 2014. The victim was aged around 16 years. The accused and the victim stayed together. She was subjected to forcible sexual assault. Both of them were traced. The accused was arrested. Investigation proceeded and the charge-sheet was filed.

4. Learned Advocate for the applicant inadvertently submitted that the applicant has deposited the fine amount, however, the fine amount has not been deposited but the applicant undertakes to deposit the fine amount within stipulated time. The applicant was on bail during trial. The facility of bail has not been misused. The relationship was of consensual nature. The history provided by the victim girl and her version in her statement recorded under Sections 161 & 164 of Cr.P.C. are contradictory. The age was not proved by the prosecution. It is not proved that that the victim was minor at the time of incident. The prosecution has examined PW-4, who has produced the register about the birth date of the victim from school. However, the birth certificate or any other authentic document has not been proved. The father of victim had not stated that the victim had studied in the school of which register was produced by PW-4. The victim had accompanied the accused. They stayed together. The physical relationship was consensual.

5. Learned APP submitted that the victim was minor. The evidence of PW-4 establishes that her date of birth is 22nd May, 1998. On the day of incident the victim was below 18 years of age. The victim has told that physical relationship was forcible.

6. Learned Advocate for Respondent No.2 has supported the submissions of learned APP. It is submitted that the victim was minor. She was aged around 16 years at the time of incident. The accused was involved in kidnapping the minor girl and subjected her to penetrative sexual assault.

7. From the evidence of victim girl (PW-2) it is evident that she was acquainted with the accused. There was friendship between them. The accused handed over cell phone to victim girl. She was called to Lonavala. Both of them left together to Gwalior. From 4th November, 2014 to 8th November, 2014 there was physical relationship between them at the house of accused. The victim has stated that it was forcible physical relationship. PW-3 is the Medical Officer. He has referred to the history provided by the victim girl. The history indicate that the victim girl had informed the medical officer that she had love affair with the accused. They performed marriage on 3rd November, 2014 in the temple. There was physical relationship between them with her consent. They frequently established physical relationship. From the evidence it

appears that the relationship was consensual. The victim had accompanied accused to Gwalior. The defence has seriously debated the document relating to the birth of the victim girl. Birth certificate has not been produced. The applicant was on bail during trial. There is no adverse report about the misuse of facility of bail. Considering these circumstances, case for suspension of sentence and grant of bail is made out.

8. Hence, I pass the following order:

ORDER

- i. Interim Application No. 1177 of 2022 is allowed;
- ii. During the pendency of Criminal Appeal No.370 of 2022, the sentence of imprisonment imposed vide Judgment and order dated 19th January, 2022 passed by learned Additional Sessions Judge in Special (POCSO) Case No.42 of 2015 is suspended and the applicant is directed to be released on bail on executing P.R. Bond in the sum of Rs.20,000/- with one or more sureties in the like amount;
- iii. The applicant is permitted to furnish cash bail in the sum of Rs.20,000/- for a period of eight weeks in lieu of surety.
- iv. The applicant shall deposit the fine amount of Rs.25,000/- within a period of two weeks from the date of his release.

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. Interim Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)