

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

**INTERIM APPLICATION NO. 983 OF 2020
IN
CRIMINAL APPEAL NO. 212 OF 2022**

Umesh Ramesh Raskar ..Applicant/Appellant
Versus
State of Maharashtra And Anr. ..Respondents

Ms. Rebecca Gonsalvez Advocate for the Applicant/Appellant.
Ms. Priyanka Chavan Advocate for the Respondent No.2.
Mr. Arfan Sait APP for the State.

CORAM : PRAKASH D. NAIK, J.

Date : 7th APRIL, 2022.

PC.

1. This is an application for suspension of sentence and grant of bail during the pendency of Criminal Appeal No.212 of 2022. The applicant is convicted for the offence under Section 5(j) (ii) r/w Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act") and sentenced to undergo rigorous imprisonment for twelve years and pay fine of Rs.25,000/- (Twenty Five Thousand Only). He is also convicted under Section 5(l) punishable under Section 6 of POCSO Act and sentenced to suffer imprisonment for twelve years and pay fine of Rs.25,000/- (Twenty

Five Thousand Only). He is further convicted for the offence under Section 5(q) r/w under Section 6 of POCSO Act and sentenced to undergo imprisonment for twelve years and to pay fine of Rs.25,000/- (Twenty Five Thousand Only). He is also convicted under Section 5(n) r/w Section 6 of POCSO Act and sentenced to suffer imprisonment of twelve years and fine of Rs.25,000/- (Twenty Five Thousand Only). He is convicted under Section 376(2)(i) of Indian Penal Code (for short "IPC") and sentenced to suffer imprisonment of twelve years and to pay fine of Rs.25,000/- (Twenty Five Thousand Only). The sentences were directed to run concurrently.

2. The case of the prosecution is that the victim was kept at the house of informant's sister for education. It was noticed that, she was pregnant. While taking her in confidence the victim disclosed that, the victim and the son of informant's sister were attracted to each other. They were having love affair and physical relations. The victim was taken to hospital for termination of pregnancy. The matter was reported to Police. First Information Report (for short "FIR") was registered. The applicant was arraigned as accused no.1

while his mother was accused no.2. The accused was arrested. On completing investigation, charge-sheet was filed.

3. Learned Advocate for the applicant submitted that, the applicant was on bail during the trial. He has not misused the facility of bail. He is in custody from the date of conviction. The relationship if any was of consensual nature. The appeal is not be likely to be heard immediately. The victim was examined as PW-3. She has stated that her date of birth is 24.12.1995. In the school her date of birth was recorded as 24.12.1998. The accused is son of her aunt. She did not support the prosecution case. She was declared hostile. In the medical history provided by the victim, it was stated that there was physical relationship between the accused and the victim with the consent of victim. They had sexual relationship at the residence of accused on several occasions. PW-10 was attached to Lonand police station as incharge API has deposed that, he had forwarded the letter to obtain DNA examination kit from concern department. He obtained DNA profile from the Sasoon Hospital, Pune and sent it to Mumbai for DNA examination. He obtained bonafide certificate of victim from her school. As per school bonafide

certificate, the date of birth of victim is 24.12.1998. He also collected the birth certificate of victim. During investigation he did not receive information about exact date, period of sexual relations established by accused with the victim. He did not inquire as to when accused goes to Pune to duty and when he comes back from the duty. He has not recorded the statement owner of the house where accused resides.

4. Learned APP and Learned Advocate for the respondent No.2 submitted that victim was minor at the time of incident. The medical reports supports the prosecution case. The age of the victim was proved. She was minor. If the victim was major the accused could have performed marriage with her. He had no intention to marry victim girl. There is sufficient evidence to prove the age of the victim. In the statement recorded under Section 313 of Cr.P.C., it is not the case of the accused that, there was love affair between him and the victim girl.

5. The applicant has been convicted vide Judgment and order dated 3rd September, 2019, since then he is in custody. He was on bail during the trial. From the evidence of the victim girl, it can be

seen that, she has not attributed any role to the applicant/accused. She was declared hostile. The medical history indicate that the victim and the accused had love affair. There was physical relationship between them. There are discrepancies relating to the evidence adduced by the prosecution about the date of birth of the victim girl. Considering the aforesaid circumstances the sentence of imprisonment can be suspended.

6. Hence, I pass the following order:-

ORDER

- i. Interim Application No. 983 of 2020 is allowed;
- ii. During the pendency of Criminal Appeal No.212 of 2022, the sentence of imprisonment imposed vide Judgment and order dated 3rd September, 2019 passed by learned Special Judge, Satara in Special (POCSO) Case No.42 of 2013 is suspended and the applicant is directed to be released on bail executing PR. 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 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.** Interim Application stands disposed of accordingly.
- vii.** This order be communicated to the applicant/appellant through Superintendent of Police where he is undergoing sentence of imprisonment.

(PRAKASH D. NAIK, J.)