

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

**INTERIM APPLICATION NO.1103 OF 2020  
IN  
CRIMINAL APPEAL NO.272 OF 2021**

Aamir Abbas Karnekar ...Applicants

Versus

The State Of Maharashtra And Anr. ...Respondents

Shri. Keshav S. Chavan, Advocate for the Applicants.

Shri. S.H. Yadav, APP for the Respondent – State.

Ms. Megha Bajoria, Advocate for Respondent No.2.

**CORAM : PRAKASH D. NAIK, J.**

**DATE : 10<sup>th</sup> JANUARY, 2022.**

**PER COURT:**

**1.** This is an application for suspension of sentence and grant of bail. During the pendency of Criminal Appeal No.272 of 2021 preferred by the applicant challenging the judgment and order dated 9<sup>th</sup> December 2019 passed by the learned Special Judge under the Protection Of Children from Sexual Offences Act, 2012 (for short “POCSO”) in POCSO Case No.227 of 2014 wherein the applicant has been convicted for the offence punishable under section 376(2) of IPC and sentenced to suffer RI for 10 years. He is also convicted for the offence under section 366 of IPC and sentenced to suffer RI for two years.

**2.** The case of the prosecution is that the victim is minor. The accused had developed relationship with the victim. There was physical relationship between them. The victim had conceived.

**3.** The accused was prosecuted for the offences under sections 376(2), 366 and 363 of IPC and Section 6 of POCSO Act. While convicting the applicant – accused it was observed that the offences under the Penal Code as well as the POCSO Act are proved against the applicant. However, no separate sentence was imposed for the offence under section 6 of POCSO Act since sentence of 10 year's imprisonment was awarded for the conviction under section 376(2) of IPC.

**4.** The learned counsel for the applicant submitted that the applicant – accused was on bail during the trial. He has not misused the facility of bail. On the date of conviction he has been taken into custody. He has undergone custody of about two years and 9 months. The relationship was of consensual nature. Although it is the case of the prosecution that the victim was minor the age of the victim has not been proved as below 18 years by cogent evidence. No documents were produced to establish that the victim was minor at the time of incident. The prosecution has relied upon the Transfer Certificate. However, there is no corroborative

evidence to show that the information on the basis of which the Transfer Certificate was issued determine the age of the victim. The applicant has good case on merits. The judgment of the trial Court suffers from discrepancies.

**5.** The learned APP submits that having proved that the victim was minor aged about 16 years, the consent is immaterial. The prosecution has adduced sufficient evidence to establish the charges. The accused has committed the offences under the Indian Penal Code as well as the POCSO Act. The accused was a married person. He has suppressed the said fact.

**6.** The learned Advocate representing the complainant submitted that the age of the victim has been proved. She was minor at the time of incident. The consent of minor is immaterial. The accused had developed the relationship with the victim by suppressing the fact that he was already married person. Assuming that there was love relationship between the accused and the victim, the victim was not aware that the accused is married person. There was promise of marriage. The offence is of serious nature. Hence, bail may not be granted pending the hearing of this Appeal.

**7.** As noted hereinabove, the appellant was on bail

during the trial. It is not reported that he has misused the liberty granted to him. The Appeal preferred by the applicant has been admitted by this Court and it is pending for final disposal. The victim in her deposition has admitted that she had developed acquaintance with the accused. Both of them used to chat with each other. The accused had promised her that he would marry her. There was a physical relationship between them. It was brought to the notice that her date of birth was 5<sup>th</sup> March 1996 as mentioned in the age determination report. It is not correct birth date. Her date of birth is 5<sup>th</sup> March 1998. The pregnancy was terminated by consent. To establish the age of the victim the prosecution has examined PW12, he has produced the Transfer Certificate of victim. He produced the admission form. According to him, the date of birth of the victim was 5<sup>th</sup> March 1998. However, on perusal of the evidence, it can be seen that the witness has not seen the original Birth Certificate of the victim before recording her date of birth. The fact that the accused was a married person is allegedly disclosed by the accused at the Police Station and the said fact is deposed by the said witnesses. The Appeal is pending for hearing. The disputed issue of date of birth will have to be gone into at the stage of final hearing. Prima facie, it can be seen that there is no cogent evidence to determine the age of the victim.

**8.** Taking into consideration the aforesaid circumstances, the sentence of imprisonment can be suspended. Hence, the following order:-

**ORDER**

- (i) Interim Application No.1103 of 2020 is allowed;
- (ii) Pending the hearing and final disposal of Criminal Appeal No.272 of 2020, the sentence of imprisonment awarded against the accused in POCSO Case No.227 of 2014 by the Court of Sessions Judge and the Designated Judge for Greater Bombay, POCSO vide judgment and order dated 9<sup>th</sup> December 2019 is suspended and the applicant is directed to be released on bail on PR. Bond in the sum of Rs.25,000/- with one or more solvent sureties in the like amount;
- (iii) 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;
- (iv) The applicant shall report the trial Court once in six months on the first Monday of that month between 11.00 am to 1.00 pm.;

- (v) In the event, there are two consecutive defaults in appearing to the trial Court by applicant, the said fact be brought to the notice of this Court;
- (vi) Interim Application No.1103 of 2020 stands disposed off.

**(PRAKASH D. NAIK, J.)**