

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 1266 OF 2022
IN
CRIMINAL APPEAL NO. 406 OF 2022

Suraj @ Rajat Brijes Bhattad ...Applicant/Appellant
Versus
The State Of Maharashtra And Anr. ...Respondents

• • • •

Mr. Priyal G. Sarda, Advocate for the Appellant.

Mr. Rajat Malu h/f. Mr. Sushan Barshikar, Advocate for the Respondent
No.2.

Mr. A. R. Kapadnis, APP for the Respondent – State.

CORAM : PRAKASH D. NAIK, J.
DATE : 21st APRIL, 2022.

PER COURT:

1. This is an application for suspension of sentence and grant of bail during the pendency of Criminal Appeal No.406 of 2022.

2. The applicant is convicted by the Court of Extra Joint Additional Sessions Judge, Pune vide judgment and order dated 30th March, 2022 for offence punishable under Section 363 of Indian Penal Code (for short “IPC”) and sentenced to suffer imprisonment for one year. He is also convicted for offence under Section 376(n) of IPC and Section 5(1) punishable under Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short

‘POCSO Act’) and sentenced to suffer imprisonment of 20 years.

Both the sentences were directed to run concurrently.

3. The case of the prosecution is that the victim had left the house for attending college on 30th January, 2020, however, she did not attend the college. She did not return home. Subsequently, it was learnt that the accused and victim were together at Parbhani. They were apprehended by Police. Statement of victim was recorded. During investigation it was revealed that the victim and the accused had eloped. Both of them went to Jodhpur by train. The accused took the victim to the house of his grandfather. Thereafter, she was taken to Jaipur. On 8th February, 2020, the accused brought the victim to Pune. The victim had told the Police that there was no physical relations between them. She was sent for medical examination, which indicated that there was penetrative sexual intercourse. The First Information Report (for short ‘FIR’) was registered and charge-sheet was filed.

4. During the trial, the victim girl was examined as PW-2. She has not support the prosecution case. She was declared hostile.

5. Learned Advocate for the applicant submitted that the evidence on record discloses that the relationship was consensual.

The prosecution has not proved that the victim was minor. During trial the applicant was on bail. He has not misused the facility of bail. The applicant and the victim (respondent No.2) has performed marriage. The victim is major. The marriage has been registered. The certificate of marriage registration is annexed to this application. The victim and the applicant are residing together. From the date of conviction, the applicant is in custody.

6. Learned APP submitted that, consent, if any is immaterial. The victim was below 18 years at the time of incident. The offence is proved. The victim is present in the Court.

7. Learned Advocate Mr. Rajat Malu representing respondent No.2/victim submitted that the victim and appellant has performed marriage. They are residing together. The respondent No.2/victim has filed an affidavit. The affidavit is taken on record. It is submitted that the applicant/appellant be granted bail by suspending the sentence.

8. From the evidence on record it appears that the relationship was consensual. The victim and accused had performed marriage. They are residing together. According to the defence, it is not proved by the prosecution that victim was minor.

9. Considering the factual aspects of this proceeding and also considering the fact that the applicant was on bail during trial and there is no adverse report about misuse the facility of bail granted to him, case for suspension of sentence and grant of bail is made out.

10. Hence, I pass the following order:

ORDER

- i. Interim Application No. 1266 of 2022 is allowed;
- ii. During the pendency of Criminal Appeal No.406 of 2022, the sentence of imprisonment imposed vide Judgment and order dated 30th March, 2022 passed by learned Extra Jt. Additional Judge, Pune in Special Case (POCSO) No.244 of 2020 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 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.

(PRAKASH D. NAIK, J.)