

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

**INTERIM APPLICATION NO.1371 OF 2022
IN
CRIMINAL APPEAL NO.444 OF 2022**

Arbaz Imran Nadaf Applicant
Versus
The State of Maharashtra & Ors. Respondents

Ms. Anjali Patil, Advocate for the Applicant.
Mr. S.R. Agarkar, Advocate for Respondent No.1-State.
Ms. Archana Howal, Advocate for Respondent Nos.2 & 3.

CORAM : SARANG V. KOTWAL, J.

DATE : 14th OCTOBER, 2022

P.C. :

1. This is an application for bail pending disposal of Criminal Appeal No.444/2022. The applicant was convicted by the Special Judge, Pune under the POCSO Act vide judgment and order dated 4.4.2022 in Special Sessions Case No.512/2020. The applicant was convicted for commission of offence punishable under Section 376(2)(n) of IPC and under Section 5(1)(j)(ii) read with 6 of the POCSO Act. The

major punishment imposed on him was for 20 years besides imposition of fine.

2. Heard Ms. Anjali Patil, learned counsel for the applicant, Shri S.R. Agarkar, learned counsel for the respondent No.1-State and Ms. Archana Howal, learned counsel for the respondent Nos.2 & 3.

3. The prosecution case is that the victim PW-2 was a minor and her date of birth was 24.12.2004. In April, 2020, she was pregnant. The FIR was lodged by the sister of PW-1. According to the prosecution case the applicant was responsible for her pregnancy. He had kept physical relations with PW-2 when she was below 16 years of age and, therefore, the investigation was carried out. He was arrested on 14.7.2020. Since then he is in custody.

4. Respondent Nos.2 & 3, who are the informant and the victim herself, are represented by an Advocate. Learned counsel appearing for these two respondents have tendered affidavits of both these respondents. They are

taken on record and marked 'X' and 'X1' for identification. Copies of these affidavits are served on learned APP. Both the respondent Nos.2 & 3 have stated in their affidavits that PW-2 was having consensual relations with the applicant and only out of misunderstanding the respondent No.2 had lodged the FIR. As a result of her pregnancy she gave birth to her child. Copy of the birth certificate of the child is annexed to the affidavit which shows name of the applicant as father of the child. According to her, her actual date of birth was 24.12.2000 and not 24.4.2004 as per the prosecution case. Both of them have prayed that bail be granted to the applicant otherwise PW-2 and her daughter will suffer great prejudice and difficulty.

5. Learned counsel for the applicant relied on these affidavits. She submitted that there is some reasonable doubt created about the date of birth of the victim. She herself has stated that her date of birth is 24.12.2000 in her deposition. Therefore, there is no reason to disbelieve her deposition.

6. I have perused the depositions of PWs-1 & 2.

PW-1 has deposed that the date of birth of the victim was 24.12.2000 and she had got married with the applicant on 3.9.2019. In April, 2020 she was pregnant. She denied the other incriminating prosecution case against the applicant. In the cross-examination conducted on behalf of the applicant, she has deposed that the birth certificate and the Aadhaar card were prepared on the basis of the information given by the father of PWs-1 & 2. They themselves were not aware how to correct that record. She has deposed that she had signed the FIR out of fear and because of pressure of social workers and police.

7. PW-2 in her cross-examination has deposed that she was born in Karnataka at the native place of her mother. She was not aware as to why her father had given the date of birth as '24.12.2004'. Till this case was launched she did not feel it necessary to get her date of birth corrected. She has further deposed in her cross-examination that she wanted to reside with the applicant. After their marriage, the applicant and his relatives were taking good care of herself

and her child and that she had absolutely no complaints against the applicant.

8. The affidavit of the sister of the victim shows that her father died on 14.7.2011 which was much prior to this case.

9. Considering all these aspects, some reasonable doubt is created about the actual date of birth of the victim which is a crucial factor in this case. The applicant is sentenced to suffer RI for twenty years. He has young daughter of two years age. The victim and her sister who was the first informant; have not supported the prosecution case. The appeal is already admitted and there is a reasonable possibility of his acquittal.

10. Learned APP did not have serious objection for showing leniency in this matter at this stage.

11. Considering all these aspects only for consideration of bail sympathetic approach can be adopted and the applicant can be granted bail pending his appeal. It

is made clear that all these questions are left open to be decided at the final hearing stage.

12. Hence, the following order :

:: O R D E R ::

- i. During pendency and final disposal of Criminal Appeal No.444/2022, the applicant is directed to be released on bail on his furnishing P.R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- ii. Interim Application is disposed of accordingly.

(SARANG V. KOTWAL, J.)

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by
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Deshmane (PS)