

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

**INTERIM APPLICATION NO. 1383 OF 2021
IN
CRIMINAL APPEAL NO. 440 OF 2021**

Muradali Muhabbat Hasmi ..Applicant/Appellant
Versus
State of Maharashtra And Anr. ..Respondents

Mr. Vikas R. Kolekar, Advocate for the Applicant/Appellant.
Mr. S.V. Gavand, APP for the State.
Mr. Subir Sarkar, Advocate for the Respondent No.2.

CORAM : PRAKASH D. NAIK, J.

Date : 7th APRIL, 2022.

PC.

1. The applicant is convicted by Judgment and order dated 5th December, 2020 for the offence punishable under Section 376(3) of Indian Penal Code (for short “IPC”) and Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short “POCSO Act”). He has been sentenced to suffer imprisonment for twenty years. He is also convicted for offences punishable under Sections 8 and 12 of POCSO Act and sentenced to suffer imprisonment for 3 years and 1 year respectively.

2. The prosecution case is that the victim got acquainted with the accused. He told her that he likes her and he will marry with her. There is open place near bathroom of her house. The accused used to call her at that place. The victim girl used to go to that place after sleeping of all family members. Under the pretext of marriage the accused had forcible physical relations with the victim girl. The accused threatened the victim girl that she should not disclose the incident to anyone. Otherwise she would defame her. From last week of November till second week of December, accused kept relations with the victim at about seven to eight times and thereafter, he left the village. On 17.03.2019 victim was not keeping well, hence she was taken to hospital. After examining her the doctor stated that she is pregnant. Complaint was lodged. Accused was arrested. The statement of victim girl was recorded under Section 164 of Cr.P.C. Accused was arrested on 29.03.2019. On completing investigation, charge-sheet was filed.

2. Learned Advocate for the applicant submitted that the applicant is in custody from 29.03.2019. The applicant has been falsely implicated in this case. The DNA report does not support the

prosecution case. The age of victim girl is not proved. There is delay in lodging First Information Report (for short "FIR"). The alleged incident took place in November-2018. The FIR was lodged on 20.03.2019. The victim has alleged that she was in relationship with the accused. She was admitted in hospital on 07.03.2019 and discharged on 19.03.2019. The report was filed on 20.03.2019. He relied upon order passed by this Court in the case of Anand Waman Randhe vs The State of Maharashtra dated 06.10.2020 and order of Hon'ble Supreme Court in the case of Jayanta Chatterjee V/s State of West Bengal passed in Criminal Appeal No.537 of 2020 arising out of SLP (Crl.) No.2844 of dated 24.08.2020.

3. Learned APP submitted that, specific role has been attributed to the applicant. There was false promise of marriage. The victim was minor. Under the pretext of promise of marriage, victim was subjected to sexual assault. The DNA report did not match with accused due to technical reasons. Learned Advocate for the respondent No.2 supported submissions of learned APP. It is submitted that, the accused had sexually intercourse with the victim. She was pregnant. There is no reason to falsely implicate the

applicant/accused. The statement under Section 164 of Cr.P.C. shows involvement of the applicant. He relied on order passed by apex Court in the case of X (Minor) V/s State of Jharkhand passed in Criminal Appeal No.263 of 2022.

4. According to victim, in 2018, accused Sonu had approached her father for work. He was residing near victims house in rented premises. He told the victim girl that he likes her and he would marry her. He used to call her at a place at the side of her bathroom. She used to meet him after all the family members goes to sleep. The accused told victim to keep physical relations with him as he would marry her. He had physical relations forcibly against her will with promise of marriage. She was threatened. That she would be defame, if she discussed about their relationship to anybody. About seven to eight occasions there was physical relationship between them. After completion of work the accused went back to his village. He did not return. The victim was taken to hospital. She was pregnant. She has not disclosed her date of birth. She did not inform the incident to her parents. The last incident of physical relationship was on 15th December. She admitted that there was

friendship between her and the accused. Till 15th December there was friendly relations between them. She referred name of accused as sonu. On 29.03.2019 Police showed her Sonu with Adhar Card at Police Station and told her that he is Sonu. PW-2 has disclosed that victim girl is aged about 16 years. She did not produce any document about age of victim. She is the mother of victim. PW-8 collected Bonafide certificate of the victim was collected from the school. According to her birth certificate was produced by victim's mother. The FIR was lodged against one Sonu on 20.03.2019. PW-8 did not make enquiry in the office of birth registration relating to birth certificate produced by mother of victim. The DNA report did not match with accused. The applicant is in custody from 29.03.2019. Considering these aspects, the sentence of imprisonment can be suspended.

5. Hence, I pass the following order:-

ORDER

- i. Interim Application No. 1383 of 2021 is allowed;
- ii. During the pendency of Criminal Appeal No.440 of 2021, the sentence of imprisonment imposed vide Judgment and

order dated 15th December, 2020 Ld. Special Judge (POCSO) and Additional Sessions Judge, Islampur in Sessions Case No.12 of 2019 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 ten 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.)