

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

**INTERIM APPLICATION NO. 1695 OF 2022
IN
CRIMINAL APPEAL NO. 577 OF 2022**

Bhimrao Dnyanoba Wavle ..Appellant
Versus
The State of Maharashtra & Anr. ..Respondents

Mr. Satyavrat Joshi a/w. Nitesh J. Mohite for Appellant.
Smt. J. S. Lohokare, APP for State/Respondent No.1.
Mr. Sushan Mhatre, (Appointed advocate) for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.
DATE : 14th SEPTEMBER 2022

PC :

1. This is an application for bail for releasing the applicant by suspending his sentence during pendency and final disposal of Criminal Appeal No.577 of 2022. The applicant was convicted for commission of offence punishable U/s.376 of I.P.C. and under section 5(l), (j) (ii) punishable U/s.6 of the Protection of Children from Sexual Offences Act. The maximum sentence imposed on the applicant was for 10 years besides imposition of fine of Rs.10000/-.

2. Heard Shri. Satyavrat Joshi, learned counsel for the Applicant, Smt. Lohokare, learned APP for the State and Shri. Sushan Mhatre, learned appointed advocate for the Respondent No.2.

3. Learned counsel for the applicant states that the fine amount is paid. He submitted that the evidence of the victim shows that, it was a consensual love affair. Her evidence also shows that she was above 18 years of age and, therefore, no offence is made out.

4. Learned counsel for the Respondent No.2, as well as, learned APP relied on the birth certificate, as well as, bonafide certificate which show that the victim was about 16 years and 4 months of age at the time of incident which had taken place in the first half of 2019.

5. I have considered these submissions, and in particular, I have perused the depositions of PW-1 victim and PW-2 the victim's mother. PW-1 in her deposition has specifically stated that her date of birth was 14/01/2000. She also admitted that her birth

certificate shows that her date of birth was 16/09/2002. She has deposed that, she came in contact with the applicant in their college. They were meeting each other regularly and there were instances of consensual intercourse between them on 5 to 6 times in the house of the applicant. She became pregnant. When she was admitted to Sassoon hospital, her father came to know about the involvement of the Applicant and then her father lodged the F.I.R. with the police station.

In the cross-examination, she deposed that her brother was born on 22/06/1994 and within 4 to 5 years of his birth she was born. That means she was born around 1999 to 2000. She had told the applicant and her friends that her date of birth was 14/01/2000; this she had admitted in her cross-examination. She has further admitted that, she had decided to marry the applicant. In the year 2000 itself they had exchanged garlands in a temple at Dhayari. They wanted to perform registered marriage, but since the applicant was below 21 years of age, it was not possible at that time. Thus, her cross-examination clearly shows that it was a consensual relationship and they had also decided to get married.

6. The cross-examination of PW-2 i.e. victim's mother mentions that the victim was born in the year 2000 in the month of January. Thus, there is some doubt about the exact date of birth of the victim. The victim's own case is that, she was above 18 years of age when the applicant and she had consensual physical relationship. All these factors will have to be decided during final hearing of the appeal. But at this stage, for consideration of the Appeal, sufficient doubt is created about the prosecution case. The applicant himself was very young and was below 21 years of age at the time of alleged commission of offence. The Applicant was on bail during trial. He has not misused the same. Therefore, I am inclined to grant bail to the applicant pending hearing and final disposal of the appeal.

7. Hence, the order:

ORDER

- i) During pendency and final disposal of Criminal Appeal No.577 of 2022 the applicant is directed to be released on bail on his furnishing PR. bond

in the sum of Rs.30000/- with one or two sureties
in the like amount.

ii) The Application is disposed of.

(SARANG V. KOTWAL, J.)