

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

**INTERIM APPLICATION NO.2078 OF 2022
IN
CRIMINAL APPEAL NO.661 OF 2022**

Akash Gulab Yadav Applicant
Versus
The State of Maharashtra & Ors. Respondents

Mr. Nitin Gaware Patil, Advocate for the Applicant.
Smt. M.R. Tidke, APP for the Respondent No.1-State.
Mr. Machindra A. Patil, Advocate (appointed) for Respondent No.2.

**CORAM : SARANG V. KOTWAL, J.
DATE : 08th DECEMBER, 2022**

P.C. :

1. This is an application for bail pending final disposal of Criminal Appeal No.661/2022 preferred by the applicant. The applicant was convicted and sentenced by the Additional Sessions Judge, Pune vide his judgment and order dated 9.6.2022 passed in Special POCSO Case No.128/2016. The applicant was convicted for commission of the offence punishable under Section 376 of IPC and under Section 4 of the Protection of Children from Sexual Offences Act, 2012

(POCSO Act) and was sentenced to suffer RI for seven years and to pay fine of Rs.1 Lakh and in default to suffer SI for three months. He was acquitted from the offences punishable under Sections 323, 504, 506 of IPC and Section 8 of the POCSO Act.

2. Heard Shri Nitin Gaware Patil, learned counsel for the applicant, Smt. M.R. Tidke, learned APP for the respondent No.1-State and Shri Machindra Patil, learned appointed advocate for the respondent No.2.

3. The prosecution case is that the victim PW-2 and the applicant got acquainted through a common friend. Their relations grew into affair. The families of both sides were made aware of their relationship. Both the families had agreed for their marriage. On 30.3.2015, the victim was invited to stay at the house of the applicant. She had gone there. In his house, the applicant was sleeping in his bed-room. His parents were sleeping in another bed-room. The victim slept in the hall where the applicant's sister and brother were sleeping. It is her case that in the night the

applicant took her to his bed-room. He had pressed her mouth. After that he had physical intercourse with the victim. He told her not to disclose it to anybody. Even after this incident, they had their physical relations in a lodge and at a different place again. Subsequently the applicant refused to marry her. Therefore, finally the victim lodged her FIR. According to her, she was born on 9.11.1997. Thus, on the date of incident she was about 17 years and 5 months of age according to her.

4. Learned counsel for the applicant submitted that it is a clear case of consent. In that case, the age would be important, but, the prosecution has not only failed to prove her age but has not deliberately produced any documentary evidence on record to prove that she was below 18 years of age on the date of incident. He, therefore, submitted that no offence is made out against the applicant. At present the applicant is married to someone else and the victim is also married to someone else. The applicant was on bail during trial and has not misused the same.

5. Learned counsel for the respondent No.2 as well as learned APP opposed this application. They submitted that there is no reason to doubt the victim's version that she was below 18 years of age and the sexual intercourse is performed on false promise of marriage.

6. I have considered these submissions. When the incident took place the marriage was fixed between the parties. Therefore, at that stage there was no misrepresentation on fact by the applicant that the marriage would not take place. The description shows that there were others in the house and the victim has not raised any objection.

7. There is some force in the submission of learned counsel for the applicant that the relationship was consensual. In that view of the matter, her age would be of a great importance. However, the prosecution has not produced any documentary proof in the form of birth certificate or school record to prove that she was below 18 years of age. Though she has claimed that her date of birth

was 9.11.1997, it was easy for the prosecution to have produced some documentary record in support of this contention. Therefore, at this stage, some benefit can be given to the applicant in the background of the case for consideration of bail pending his appeal.

8. All these questions will have to be finally decided at the final hearing stage. The applicant was on bail during trial and there are no allegations that he has misused the same.

9. Hence the following order :

:: O R D E R ::

- i. During pendency and final disposal of Criminal Appeal No.661/2022, 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.)