

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

**INTERIM APPLICATION NO.2321 OF 2022
IN
CRIMINAL APPEAL NO.711 OF 2022**

Sunil Shivaji Patil

.... Applicant

versus

State of Maharashtra & Anr.

.... Respondents

.....

- Mr. Chetan Alai i/b. Atmaram Patade, Advocate for Applicant.
- Smt. J. S. Lohokare, APP for the State/Respondent No.1.
- Ms. Seema Singh, (Appointed Advocate) for Respondent No.2.

**CORAM : SARANG V. KOTWAL, J.
DATE : 12th SEPTEMBER, 2022**

P.C. :

1. This is an application for bail pending disposal and final hearing of Criminal Appeal No.711 of 2022.

2. The Applicant was convicted for commission of offence punishable u/s 376 (2)(n), 363 and 506 of the Indian Penal Code. He was also convicted for the offence punishable u/s 8 r/w 6 of the Protection of Children from Sexual Offences Act,

2012. The maximum sentence that was imposed on him was of 10 years besides imposition of fine.

3. Heard Mr.Chetan Alai, learned counsel for the Applicant, Ms. Seema Singh, learned counsel for Respondent No.2 and Smt. J. S. Lohokare, learned APP for the State.

4. Learned counsel for the Applicant submitted that it was a clear case of consent. The victim on her own had eloped with the Applicant. There was no force involved. It was with her consent. He submitted that the Applicant was on bail during trial and he has not misused the liberty. He further submitted that the age of the victim is not proved by the prosecution as the concerned Headmaster from the school did not have any personal knowledge about the date of birth.

5. Learned APP as well as learned counsel for the Respondent No.2 opposed this application. They relied on the deposition of the victim. There is no reason to doubt the

genuineness of the domicile certificate mentioning the date of birth of the victim and therefore the victim was under age of 18 years. Therefore her consent was immaterial. Her case is that the physical relations were established by the Applicant against her wish and will and therefore the offence is serious.

6. I have considered these submissions. The victim herself was examined as P.W.1. Her date of birth was 09/07/2004. The incident had taken place in January 2019. It is her case that on 11/01/2019, the Applicant had told her that he would marry her and that she should leave her house. On 12/01/2019 the victim left her house. She went to various places and reached Gaganbawada. She called the Applicant there. The Applicant took her to his house. There were other family members in the house. The victim expressed her wish to reside there. She did not want to go her parent's house. It is her case that on 13/01/2019 and 14/01/2019, the Applicant established physical relations with her. It is her specific case that on 13/01/2019 the Applicant expressed his wish to establish physical relations. The

victim refused. At that time, the Applicant threatened her that he would leave her with her parents and he would defame her and her parents. After that, he established physical relations with her. On 14/01/2019 and on 26/03/2019 again he kept physical relations against her wish. Ultimately on 01/04/2019 the Applicant produced her before Kankavli police station and then the investigation continued.

7. Thus from her evidence it does appear that she had willingly left her parent's house. But thereafter the Applicant had established physical relations against her wish and under threats. In that respect the victim has clearly deposed against the Applicant. P.W.7 was examined as the Headmaster of a school at Kasarde, where the victim was studying. According to school record, the date of birth of the victim was 09/07/2004. At this stage, there is no reason to doubt that certificate for consideration of this bail application. As per that certificate, the victim was below 15 years of age at the time of incident. Thus there is sufficient evidence against the Applicant justifying his

conviction and sentence. Therefore no case for grant of bail is made out. The application is rejected. However, considering the background of the case, the Appeal is expedited.

(SARANG V. KOTWAL, J.)