

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.2068 OF 2021
IN
CRIMINAL APPEAL NO.685 OF 2021

Ajay Kamlakar Waghmare

Applicant

versus

The State of Maharashtra and another

Respondents

Ms.Savita Yadav, Advocate for applicant.

Mr.Tanveer Khan, Advocate for Respondent no.2.

Mr.S.H.Yadav, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 5th January 2022

PC :

1. This is an application for suspension of sentence and grant of bail. The applicant is convicted for the offence under Section 376(2) (i) and (n) of Indian Penal Code and sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs.5,000/-. He is also convicted for the offences under Sections 3,4,6 and 8 of Protection of Children from Sexual Offences Act, 2012 ('POCSO Act'). No separate sentence has been awarded under POCSO Act. The applicant is acquitted for the offence u/s.366 of IPC.

2. The case of prosecution is that the victim was kidnapped by the accused on 31st May 2019 and she was repeatedly subjected to sexual assault. The prosecution examined about seven witnesses. It is alleged that the victim was about 15 years and 10 months at the time of incident.

3. Learned counsel for applicant submitted that the evidence of victim indicate that she was in live with the accused. The relationship was consensual. She was tutored by her family to make statement against accused. At the instance of her family she gave her date of birth. It is further submitted that there is serious doubt about proof of birth. The Investigating Officer has placed on record the birth certificate without disclosing the source of document. The birth certificate indicate that birth was registered immediately on the next date, whereas the evidence of the mother of the victim discloses that she is not aware about the date of birth of the victim. She has deposed that birth was not registered immediately. The radiological report indicate that the age of the victim could be up to 17 years. The benefit of doubt must be given to the accused. He is in jail for about two and half years.

4. Learned APP submitted that assuming that the deposition of the victim to be true, the fact remains that the victim was minor at the time of incident and her consent, if any, is immaterial. Birth certificate is produced by the Investigating Officer and there is no reason to disbelieve the same.

5. Learned counsel appointed to represent the complainant-victim submitted that the date of birth has been established through the birth certificate. The document has been proved by following principles of law of evidence. The victim was minor at time time of incident. The consent, if any, is of no consequence. There is every likelihood that appeal of the applicant-appellant would be dismissed. There is sufficient evidence to prove the charge against applicant.

Hence, this application for suspension of sentence and grant of bail may be rejected.

6. It appears that the applicant was aged about 22 years at the time of incident. From the evidence of prosecutrix it can be seen that she was in love with the applicant. There was consequential physical relationship at various places. Her family had fixed her marriage and one boy had come to see her. She left the house and went to Alibag and then at Pen. She met the accused and thereafter they went to house of the relative of accused. They stayed together for a long period of time. In the cross-examination she has stated that her mother and police had tutored her to give the statement. I have also perused the evidence of victim's mother and other witnesses. The radiology report indicate that the age of victim could be between 15 to 17 years. The appeal preferred by the applicant stands admitted. The applicant has raised serious doubt about the date of birth of the victim. The issue will have to be dealt with at the final hearing of the appeal. Prime facie, on the basis of submissions of learned counsel for applicant, ground is made out for suspension of sentence. The applicant is in custody for a period of about two and half years. There are no criminal antecedents against him.

7. Hence, I pass following order :

ORDER

- (i) Interim Application is allowed and disposed of;
- (ii) During pendency of Criminal Appeal No.685 of 2021, the sentence of imprisonment imposed against applicant vide judgment and order dated 14th August 2020 passed by Special Judge, Raigad,

at Alibag in Special Case No.53 of 2020, is suspended and the applicant is directed to be released on bail on executing PR 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 eight weeks in lieu of sureties.

(PRAKASH D. NAIK, J.)

MST