

under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act') and was sentenced to suffer RI for ten years and to pay fine of Rs.20,000/- and in default to suffer RI for three months. The applicant was also convicted for commission of offence punishable under Section 376(1) of IPC but separate sentence was not imposed in view of the sentence under Section 4 of the POCSO Act. He was granted set-off for the period he had undergone as an under-trial prisoner under Section 428 of Cr.P.C.. Out of fine amount, Rs.15,000/- was directed to be paid to the victim.

2. Heard Shri Aniket Nikam, learned counsel for the applicant, Shri Yogesh Dabke, learned APP for respondent No.1-State and Shri Prasad Kulkarni, learned appointed advocate for respondent No.2.

3. Learned counsel for the applicant submitted that the evidence of the victim is not trustworthy. She has given vague narration of the incident. There are indications that she was trying to save herself because her mother had threatened to lodge a complaint against her.

4. He submitted that even the mother's evidence does

not inspire confidence. The prosecution was launched at the behest of one Kavita, but, she was not examined. No explanation is offered for non-examination of said Kavita.

5. He further submitted that in any case even as per the prosecution case there was a love relationship; and the victim and the applicant are to get married, therefore, sympathy should be shown to the applicant for consideration of bail.

6. He submitted that the appeal is not likely to be heard in the near future. The applicant has no other criminal antecedents. He is only 21 years of age as of today.

7. Learned counsel for the applicant also relied on the order dated 7.12.2020 passed in Interim Application No.818/2019 in Criminal Appeal No.1415/2019 passed by a co-ordinate Bench of this Court.

8. Learned counsel for the respondent No.2-victim as well as learned APP for the State submitted that the date of birth of the victim cannot be disputed and, therefore, as she was below the age of 16 years, all the offences stand proved. Her consent is immaterial.

9. I have considered these submissions. I have also perused the depositions of the witnesses annexed to the appeal memo. The victim is examined as PW-2 at the time of trial. From her evidence, it is quite apparent that she wants to help the applicant and she really had no grievance against him. She has deposed that her date of birth is 1.7.2006. She had not given exact dates but she has mentioned that on 3rd she had gone to her friend's house. She returned on 5th. She did not tell her mother anything. She had gone to her friend's place because of quarrel with her mother. Her mother informed one Kavita about her behaviour. Then the mother beat her. At that time the victim told her about her physical relations with the applicant. He had proposed to her in the month of December. She has stated that she had physical relations with him on one occasion. She has categorically stated that she was in love with the applicant. He had told her that he would marry her. He had even met her grandmother and aunt in that connection. The applicant was called by the aforementioned Kavita.

She was cross-examined by the SPP because she had not supported the prosecution case and she had resiled

from her earlier statement. In that cross-examination, she deposed that on 11.5.2021, the applicant had called her to his house and then had established forcible relations with her. She had told this incident to her mother on 13.5.2021.

She was again cross-examined on behalf of the applicant. At that time, she again changed her version. She deposed that she was in love relationship with the applicant and they had consensual sexual relations. He had not exerted any force on her. He had never committed forcible acts with her. She has further deposed that after she was beaten by the aforesaid Kavita, she had gone to police station to lodge report. She was asked by Kavita to mention that the applicant has used force on her and that there was no love relationship with him. She had categorically stated that she would be performing marriage with the applicant after she completed eighteen years of age. She has further stated that she had given statement to the police as asked by Kavita but before the Court she was telling the truth.

10. PW-1 is the mother of the victim. She has produced the birth certificate on record at Exhibit-16. The date of birth is

mentioned as 1.7.2006. She has admitted that when the victim did not return for two days, she threatened the victim that she would lodge report if she would not tell her about the whereabouts. Then the victim returned home. Then this was told to Kavita. Kavita talked with the victim and then Kavita told PW-1 that rape was committed on the victim and she asked PW-1 to lodge report. The victim was crying and then she told about the incident. Then she went to the police station and lodged the FIR.

In the cross-examination, she has admitted that it was decided between the victim's family and the family of the applicant that after the victim completed eighteen years of age, they would get married and that they had given the statement as was instructed by Kavita.

11. Thus, it does appear that the victim wants to help the applicant. Her deposition is more important but she has not given clear answers. At various stages, she had changed her narration. She had stated that she was in love with the applicant. Her mother's deposition also indicates that she had threatened the victim that she would be lodging complaint

against her, therefore, the victim came back. Thus, sufficient doubt is created about the prosecution story. All these aspects will have to be decided during final hearing stage. At this stage, the applicant has sufficiently made out a case for grant of bail. Hence, the following order :

:: O R D E R ::

- i. During hearing and final disposal of Criminal Appeal No.749/2022, the applicant is directed to be released on bail on his furnishing PR. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- ii. Application is disposed of accordingly.

(SARANG V. KOTWAL, J.)