

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

**INTERIM APPLICATION NO.3420 OF 2022  
IN  
CRIMINAL APPEAL NO.874 OF 2022**

Anil Khanderao Gaikwad .... Applicant

versus

State of Maharashtra & Anr. .... Respondents

.....

- Mr. Akshay Bankapur, Advocate for Applicant.
- Mr. S. R. Agarkar, APP for the State/Respondent No.1.
- Mr. Ravi Vittal Asabe, Advocate for Respondent No.2.

**CORAM : SARANG V. KOTWAL, J.  
DATE : 15<sup>th</sup> DECEMBER, 2022**

**P.C. :**

1. This is an application for bail pending Appeal. The Applicant was convicted and sentenced by Additional Sessions Judge and Special Judge (POCSO), Nashik, by his Judgment and Order dated 10/08/2022, in Sessions Case (POCSO) No.232 of 2016. At the conclusion of the trial, the Applicant was convicted for commission of offence punishable u/s 4 r/w 3 of the Protection of Children from Sexual Offences Act, 2012 and u/s

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376(1) r/w 506 of the Indian Penal Code. The major punishment imposed on him was for 7 years besides imposition of fine.

2. The prosecution case is that because of the act committed by the Applicant, the victim became pregnant and delivered a child. After that, the FIR was lodged at police station. The investigation was carried out and the Applicant was arrested. At that time, the Applicant was 21 years of age. After conclusion of the investigation, charge-sheet was filed and the case was committed before the Sessions Court.
3. Heard Mr. Akshay Bankapur, learned counsel for the Applicant, Mr. Ravi Vittal Asabe, learned counsel for Respondent No.2 and Mr. S. R. Agarkar, learned APP for the State.
4. Learned counsel for Applicant submitted that it was clearly a case of consent. Therefore, her age would be relevant. In that respect, the prosecution has failed to prove that she was below 18 years of age. In that view, the offence as alleged

against the Applicant, is not proved and he deserves to be released on bail pending Appeal. The Applicant was on bail during trial and he has not misused that liberty. After his conviction in August, 2022, he was taken in custody.

5. Learned counsel for the Respondent has filed affidavit for the Respondent No.2. She has made categorical averments in the affidavit that she has no objection if the Applicant was granted bail during pendency of the Appeal. The Applicant was also young at the time of the incident. Learned counsel for the Respondent supported this affidavit and submitted that the application for bail pending Appeal be granted.

6. Learned APP however opposed this application. He submitted that there is DNA report which establishes that the Applicant was the father of the child. He also submitted that the date of the birth is properly proved through the extract of register which was a public document.

7. I have considered these submissions and in particular, I have perused the evidence of the victim herself. She has deposed that the Applicant was in love with her. They used to meet regularly in the Applicant's cousin's house. Though she has stated that he had forced him on her and had committed rape, her deposition shows that they were regularly meeting in that house resulting in her pregnancy. Her FIR itself mentions that they used to be in touch on mobile phone regularly. Out of that their love affair developed. They used to meet in the house of the Applicant's cousin frequently. All these statements do indicate that it was a consensual affair.

8. There is hardly any dispute about the paternity of the stillborn child. The DNA report establishes that the Applicant is the father of the child and therefore the prosecution has established that there was physical relationship between the Applicant and the victim.

9. Therefore, the only question that requires serious consideration is about her age. Though, the victim had claimed

that her date of birth was 18/09/1999, the extract of register which is produced at Ex.30 mentions that her date of birth was 11/09/1999. There is effective cross-examination of PW.2 Vinod Sable, Village Development Officer, conducted by learned counsel of Applicant. This witness has produced the extract of the register showing entry at Sr.No.321 from September 1999, wherein there is an entry showing that the victim was born on 11/09/1999. That entry was recorded on 14/09/1999.

In the cross-examination, he has admitted that the register provides columns for mentioning the names of the person and his signature/thumb impression who informs the Gram Panchayat about that particular birth of a child in the village. In respect of entry at Sr.No.321 this important detail is missing. Most of the entries on the same page had provided those details. The name of the victim also appears to be written subsequently. This witness has admitted that there is no application for writing that name in front of that entry. Thus some reasonable doubt is created about the genuineness of this

information and consequently about the date of birth of the victim. In this background, there is considerable force in the submission of learned counsel for the Applicant. All these issues will have to be decided at the final hearing stage. But from the discussion above and also taking into consideration that no objection is given by the Respondent No.2, the Applicant can be granted bail pending his Appeal.

10. Hence, the following order :

**ORDER**

- (i) During pendency and final disposal of the Criminal Appeal No.874 of 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) Interim Application stands disposed of accordingly.

**(SARANG V. KOTWAL, J.)**