

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

**INTERIM APPLICATION NO. 3073 OF 2021
IN
CR. APPEAL NO. 1022 OF 2021**

Ashok Ramesh Kadam

...Applicant/
Appellant

Versus

State Of Maharashtra And Anr.

...Respondent

....

Mr. Amol Mhatre a/w Mr. Sameer Mhatre, Advocate for the
Applicant/Appellant.

Mr. Dilip B. Shinde, Advocate for Respondent No.2.

Mr. Arfan Sait, APP for the Respondent – State.

**CORAM : PRAKASH D. NAIK, J.
DATE : 9th FEBRUARY, 2022.**

PER COURT:

1. This is an application for suspension of sentence and grant of bail during the pendency of Criminal Appeal No.1022 of 2021.

2. The applicant is convicted for offences under Section 376 of Indian Penal Code (for short “IPC”) and Sections 3 & 4 of Protection of Children from Sexual Offences Act, 2012 (for short ‘POCSO Act’). He has been sentenced to suffer rigorous imprisonment for a period of 10 years and to pay fine of Rs.30,000/- for offences under Sections 376 of IPC

and seven years for offence under Section 3 punishable under Section 4 of the POCSO Act with fine of Rs.20,000/-.

3. The appeal challenging the judgment of conviction has been admitted by this Court.

4. Learned Advocate for the applicant submitted that the applicant is in custody for a period of about 4 years. Initially the applicant was granted bail and thereafter he was taken in custody. The victim and her relatives has not supported the prosecution case. The victim was declared hostile and cross examined by the prosecution. In the cross examination nothing incriminating could be elicited from the victim. After the victim had attained the age of majority, marriage has been performed between her and applicant.

5. Learned APP submitted that there is sufficient evidence against the applicant. At the time of incident, the victim was minor. Thus, the victim was minor. The DNA report supports the prosecution case. Marriage between the victim and the applicant is of no consequence. Although the victim was declared hostile, the DNA report indicate that there was physical relationship between the applicant and the victim. The First Information Report was lodged when the victim was aged about 17 years and 4 months. Learned

APP relied upon the Apex Court judgment in the case of State of Madhya Pradesh V/s. Madanlal (2015) 7 SCC 681 and submitted that the offence under Section 376 of IPC is serious and the marriage between victim and the accused cannot be considered for setting aside the conviction.

6. Learned counsel for the respondent No.2 submitted that the victim has no objection for suspending the sentence and grant of bail. The victim and the applicant had performed the marriage when the victim was major. She is residing in the house of applicant.

7. On perusal of the evidence it is apparent that the victim and her mother had not supported the prosecution case. They were declared hostile. It is pertinent to note that the applicant is in custody for a period of 4 years. Considering the factual aspects and without going into the issue relating to the marriage between the parties sentence of imprisonment can be suspended.

8. Hence, I pass the following order:

ORDER

- i. Interim Application No. 3073 of 2021 is allowed;

ii. During the pendency of Criminal Appeal No.1022 of 2021, the sentence of imprisonment imposed vide Judgment and order dated 19th January, 2021 passed by learned Additional Sessions Judge, Pune in Special Case Child Prot. No. 131 of 2016 is suspended and the applicant is directed to be released on bail on executing P.R. 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 surety.

iv. The applicant shall attend the trial Court once in six months on first Saturday of the month till the final disposal of the appeal;

v. In the event, there are two consecutive default in attending the trial Court, the said fact may be brought to the notice of this Court and in such eventuality, the prosecution will be at liberty to prefer an application for cancellation of bail.

vi. Interim Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)