

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

**INTERIM APPLICATION NO. 3098 OF 2021
IN
CRIMINAL APPEAL NO. 1029 OF 2021**

Rushiraj Babasaheb Shelke ...Applicant/Appellant
Versus
The State Of Maharashtra And Anr. ...Respondents

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Mr. Niranjan Mundargi i/by Mrs. Suvarna S. Yadav, Advocate for the
Applicant/Appellant

Mr. S. V. Gavand, APP for the Respondent – State.

Mr. Tanvir Khan, Advocate for Respondent No.2. (Appointed by Legal-
aid)

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

PER COURT:

1. This is an application for suspension of sentence and
grant of bail pending Criminal Appeal No.1029 of 2021.

2. The applicant is convicted vide judgment and order
dated 8th September, 2021, passed by learned Extra Joint
Additional Sessions Judge, Pune for offence under Section 376 of
Indian Penal Code (for short “IPC”) and Section 3 punishable under
Section 4 of Protection of Children from Sexual Offences Act, 2012
(for short ‘POCSO Act’) and sentenced to suffer rigorous
imprisonment for 12 years. He is also convicted for offence under

Section 5(J)(ii) punishable under Section 6 of POCSO Act and sentenced to suffer rigorous imprisonment for 15 years. Both the sentences were directed to run concurrently.

3. Learned counsel for the applicant submitted that the applicant was on bail during the trial. There is no misuse of facility of bail granted to the applicant. The relationship was of consensual nature. The victim has admitted that, she was in relationship with the accused. According to the victim she was aged around 17 years at the time of incident. The age of the victim has not been established by cogent evidence. Although birth certificate was brought on record, the source of the said document is not disclosed. The defence has challenged the authenticity of the said document in the cross examination.

4. Learned APP submitted that there was false promise of marriage. Assuming that the relationship was of consensual nature, the victim was minor at the time of incident and the consent, if any, is of no consequence.

5. Learned counsel for respondent No.2 adopted the submissions of learned APP. In addition it is submitted that the victim was confronted with the birth certificate and she has admitted the date of birth. In the evidence she has deposed about

the date of her birth, which is in-consonance with birth certificate. The victim has stated that although they were in relationship, she was subjected to sexual relationship under force.

6. The applicant was on bail during the trial. There is no adverse report with regards to misuse of the facility of bail granted to the applicant. From the tenor of the evidence of the victim, it appears that the relationship was of consensual nature. There was love affair between them. The alleged last incident had occurred on 18-09-2017. The FIR was lodged on 20-12-2017. It appears that the victim has conceived and the said fact were disclosed after she was medically examined. Apparently, the evidence prima facie disclosed that the relationship was consensual. The other issue which is required to be considered whether the victim was minor at the time of incident. The victim has disclosed that she is above 17 years and below 18 years of age. The medical certificate has been brought on record. The evidence of Investigating Officer discloses that he has collected the birth certificate of the victim. He has not disclosed from where he has collected the birth certificate. The officer from which the birth certificate has been collected has not been examined. There is no other document relating to the proof of birth of the victim. The cross examination of the victim as well

as the Investigating Officer makes it apparent that the defence has challenged the date of the birth of victim. All these aspects will have to be considered at the time of final hearing of the appeal. Prima facie it appears that the relationship was of consensual nature. The date of the birth of the victim is debatable issue and also considering the fact that the applicant was on bail during the trial, case for suspension of sentence and grant of bail is made out.

7. Hence, I pass the following order:

ORDER

- i. Interim Application No. 3098 of 2021 is allowed;
- ii. During the pendency of Criminal Appeal No.1029 of 2021, the sentence of imprisonment imposed vide Judgment and order dated 08th September, 2021 passed by learned Extra Joint Additional Sessions Judge, Pune in Special Case (POCSO) No. 89 of 2018 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 ten 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 is disposed off accordingly.

(PRAKASH D. NAIK, J.)