

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

**INTERIM APPLICATION NO.978 OF 2019
IN
CRIMINAL APPEAL NO. 1478 OF 2019**

Pintu shamrao Rathod ..Applicant/Appellant
Versus
The State of Maharashtra ..Respondent

Ms. Rui danawala i/by Mr. Umesh Mankapure, Advocate for the Applicant/Appellant..

Ms. Priyanka Chavan, Appointed Advocate for Respondent No.2
Mr. Arfan Sait, APP for the Respondent-State.

CORAM : PRAKASH D. NAIK, J.

DATE : 23rd MARCH, 2022.

PC.

1. The Applicant is convicted vide Judgment and Order dated 19th October, 2019 passed by the learned Additional Sessions Judge – 1, Sangli in Session Case No. 86 of 2013 for offences punishable under Sections 376 & 363 of Indian Penal Code (for short “IPC”). He is sentenced to suffer imprisonment for seven years and three years on each count. The Applicant is acquitted for the offence punishable under Section 366-A r/w section-34 of IPC. The prosecution case is that the victim girl is daughter of complainant. Accused No.1 is uncle of informant. Accused No.2 is husband of

Accused No.3 and father of Accused No.4. The Accused No.2 told the victim to marry Accused No.5. There was physical relation between Accused No.5 and the victim girl.

3. Accused No.1, 2, 3, 4 and 6 were acquitted for the offences under Sections 363, 366-A and 376 of IPC.

4. Learned Advocate for the Applicant submitted that the Applicant has been falsely implicated in this case. There is no evidence to convict him for the aforesaid offences. Age of the victim is not proved. The Applicant was on bail during the trial. The facility of bail is not misused by the Applicant. The victim has stated that she was with the Appellant for several days. She travelled with him in bus at Solapur. She also travelled to Mumbai by railway. She has also stated that both of them travelled to Bangalore and Belgaon thereafter to Islampur. They also stayed in a lodge at Vijapur. PW-7 produced the bonafide certificate of victim which does not prove her age. There is no endorsement on bonafide certificate. According to PW-3 as per report the age of victim is thirteen to eighteen years.

5. Learned APP submitted that the victim was thirteen years at the time of incident. Medical evidence supports the prosecution case. The age of the victim was proved.

6. Learned Advocate for Respondent No.2 supported the submissions of learned APP. It is submitted that there is no reason to disbelieve the evidence of victim. She was minor. The medical evidence supports the version of victim. The Accused and the victim were found together.

7. The Co-Accused were acquitted of all the charges. PW-1 is the father of victim. He has stated that, he cannot tell the date of birth of the victim girl. Accused No.1 is his cousin. His house is situated at the close distance from the house of PW-1. Accused No.2 is maternal uncle of accused No.1. Accused No.3 is wife of Accused No.2 and Accused Nos.4 and 5 are his sons. Sangita is wife of Accused No.4. Accused No.1 was insisting that since he was annoyed with his daughter, she left the house voluntarily. He did not take her custody. The Police had tutored the statement to victim. PW-2 is victim girl. she stated that applicant was saying that he likes her and whether she has desire to marry him. The Accused No.1 was insisting

that she should marry Accused No.5. She did not disclose the said fact to her parents. She stated that on 30.10.2012, she left the house for answering nature's call. It was night time. While she was returning home, she met the Accused and she was forcibly taken by them to Accused No.5. She was forced to sit on motorcycle by Accused No.5. They went to Vijapur, Solapur to Mumbai, Bangalore, Belgaon with Accused No.5. The Applicant had forcible sexual intercourse with victim. PW-3 is a medical officer, who examined the victim. She stated that the mother of victim had given history that about twenty days ago, while the victim was sleeping with her mother, two unknown persons took her away victim. One of them had physical relations with her. The doctor stated that during physical examination of the victim she did not notice any external injuries. The victim was examined by Gynecologist and Radiologist. The age of the victim was thirteen to sixteen years as per report of Gynecologist. There was no injury on private part of victim. There was old healed hymenal tear. As per history the allegations of sexual intercourse were by unknown persons. PW-4 is the medical officer from Gynecology Department. She recorded the history, that the

victim was kidnapped by two unknown persons and taken on motorcycle to Vijapur and other places. She did not notice any other external injury on victim's private part. She did not notice any sign of forcible intercourse. PW-7 is the Head Master of the School. He produced school leaving certificate. The birth date of victim is 01.04.1999. He produced school register. It is not mentioned in the school register that entry of victim is based on her last school leaving register. In support of the birth date of victim, the school has not received any document. The school has not verified the birth date of victim. She cannot say, whether the birth date of victim mentioned in school leaving certificate is true or not.

8. All other co-accused were acquitted. The evidence suffers from doubts. The victim had accompanied accused to several places. There are discrepancies in the evidence relating to birth date of the victim. The applicant was on bail during the trial. Considering all the circumstances, case for suspending the sentence of imprisonment and grant of bail is made out.

9. Hence, I pass the following order:-

ORDER

- i.** Interim Application No. 978 of 2019 is allowed;
- ii.** During the pendency of Criminal Appeal No.1478 of 2019, the sentence of imprisonment imposed vide Judgment and order dated 19th October, 2019 passed by learned Additional Sessions Judge-1, Sangli, in Sessions Case No.86 of 2013 is suspended and the applicant is directed to be released on bail on executing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- iii.** The applicant is permitted to furnish cash bail in the sum of Rs.25,000/- 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 defaults 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.** The applicant shall not contact the victim and shall not cause any harassment to her.
- vii.** Interim Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)