

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

**INTERIM APPLICATION NO.1330 OF 2019
IN
CRIMINAL APPEAL NO.310 OF 2022**

Akshay Avinash Chavan Applicant
Versus
The State of Maharashtra & Anr. Respondents

Mr. Sachin Pawar, Advocate a/w. Arya Sapre i/b. Harshad Bhadbhade, for the Applicant.

Smt. J.S. Lohokare, APP for Respondent No.1-State.

Mr. Prasad Kulkarni, Advocate appointed for Respondent No.2.

CORAM :SARANG V. KOTWAL, J.

DATE : 26th JULY, 2022

P.C. :

1. This is an application for bail pending hearing and final disposal of Criminal Appeal No.310/2022.

2. Heard Shri Sachin Pawar, learned counsel for the applicant, Smt. J.S. Lohokare, learned APP for the State and Shri Prasad Kulkarni, learned counsel appointed for respondent No.2/first informant.

3. The prosecution case is that the applicant had sexual intercourse with the victim because of which she

delivered a child. According to the prosecution, at the time of the incident, she was below 18 years of age and, therefore, the offence of rape and that under the Protection of Children From Sexual Offences Act, 2012 (for short, 'POCSO Act') was committed by the applicant. At the conclusion of the trial, the applicant was convicted for commission of offence punishable under Section 3(a) read with 4 and 5(j)(ii) read with 6 of the POCSO Act. He was convicted for the offence punishable under Section 5(j)(ii) & (l) read with 6 and was sentenced to suffer RI for ten years and to pay a fine of Rs.500/-, in default to suffer SI for one month. No separate sentence was imposed for the offence punishable under Section 4 of the POCSO Act. He was acquitted for the offence punishable under Section 376(2)(i) (n) of the Indian Penal Code. He was granted set off for the period undergone as an under-trial prisoner.

4. Learned counsel for the applicant submitted that there is no conclusive proof to show that the prosecutrix was below age of 18 years at the time of incident. The

prosecutrix herself has deposed that it was a consensual relationship and, therefore, no offence at all is proved against the applicant by the prosecution evidence.

5. Learned APP as well as learned counsel appearing for the victim submitted that the school record shows that the date of birth of the prosecutrix was 8.12.2000 and therefore on the date of incident, she was below 18 years of age. According to them, the offence is made out and it being an serious offence, bail should not be granted.

6. I have considered these submissions. The victim was examined as PW-6. She has stated that her date of birth was 8.12.1998. She has admitted that she was in love with the applicant and out of that love they had physical contacts and then she conceived. She gave birth to their son on 4.10.2017. She has deposed that her date of birth was 8.12.1998 and, therefore, according to her she was major at that time. In short, she has supported the applicant while deposing before the Court. In fact in the cross-examination, she has further stated that when they had their physical

relations she had disclosed to the applicant that she was nineteen years of age. Her deposition is, therefore, definitely in favour of the applicant.

7. The prosecution has relied on the evidence of Dr. Sujata Deshpande, who is examined as PW-7, to prove that the date of birth of the victim was 8.12.2000. This doctor had supervised the delivery of a girl child born to one Bhagyashri Vijay Chavan. The prosecution wants to suggest that this child was none other than the victim herself and, therefore, on the date of incident she was below 18 years of age. However, this evidence is not very satisfactory. The doctor has stated name of the mother of the child as “Bhagyashri”. The victim has stated that her mother’s name was “Vimal’ and her step mother’s name was “Bhagyashri”. The prosecution has not thrown any light on this particular aspect. Therefore, there is reasonable doubt created about the prosecution story that the victim was below 18 years of age at the time of incident.

8. The prosecution has also examined PW-5

Hemant Bhujbal, the Head Master of the school where the victim was studying. However, he had relied on the record which was maintained on the basis of the earlier school record. That school was different. Again that link of establishing the genuineness of the earlier school record is missing.

9. In this view of the matter, sufficient doubt is created about the prosecution case. Therefore, the applicant has made out a case for his releasing on bail during pendency and final disposal of the appeal. Hence, the following order :

:: O R D E R ::

- i. During hearing and final disposal of Criminal Appeal No.310/2022, the applicant is directed to be released on bail on his furnishing P.R. 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.)