

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO. 509 OF 2022
IN
CRIMINAL APPEAL NO. 416 OF 2022

Ashok Sadashiv Pawar

-- Applicant /Appellant

Vs.

The State of Maharashtra

-- Respondent

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Zoting, Advocate for Applicant

Mr. S.S. Doifode, APP for Respondent

CORAM : MANISH PITALE AND
VALMIKI SA MENEZES, J.J.

DATE : 29th AUGUST, 2022

In this case, the applicant has been convicted for offences under Sections 363, 366, 366-A and 376(2)(j) of the Indian Penal Code, as also Sections 4, 6 and 8 of the Protection of Children from Sexual Offences Act, 2012.

2. The appeal stood admitted on 01/08/2022 and notice was issued on the application for suspension of sentence and grant of bail.

3. Today, the said application is taken up for consideration.

4. Mr. Zoting, learned counsel appearing for the applicant submitted that in the present case the most crucial aspect was

determination of age of the victim, as it was claimed that she was about 16 years old when the alleged incident took place.

5. Our attention was invited to a school leaving certificate relied upon by the prosecution to prove the age of the victim. It was submitted that no person from the Zilla Parishad Primary School, which has issued the school leaving certificate was examined on behalf of the prosecution. It was submitted that perusal of the evidence of the prosecutrix (victim) and her mother would show glaring discrepancies even in the contents of the said school leaving certificate. On this basis, it was submitted a strong *prima facie* case is made out in favour of the applicant and that the present application deserves to be allowed.

6. Mr. S.S. Doifode, learned Assistant Public Prosecutor opposed the present application and submitted that evidence and material on record was appreciated in the correct perspective by the Sessions Court while holding against the applicant.

7. We have perused the depositions of the witnesses, as also copy of the school leaving certificate placed on record. We also find that insofar as medical examination of the victim was concerned from the angle of determining her age, although she was sent for X-ray examination, but opinion of the Radiologist for determination of age was not available on record, though it was advised by the Doctor, who medically examined the victim. Therefore, there is no ossification test or report on record for determining the age of the victim.

8. In these circumstances, the determination of the age is totally dependent upon the evidence of the prosecutrix and other witnesses, in the backdrop of the school leaving certificate upon which the prosecution has placed reliance.

9. We are in agreement with the learned counsel appearing for the applicant that there are indeed some discrepancies in the oral evidence of the prosecutrix and her mother, when compared with the school leaving certificate itself. The first name of the victim is different on the school leaving certificate, as compared to what was stated by her in the deposition. The date of birth in the school leaving certificate is 02/07/2000, while in the deposition the victim claims that her date of birth is 04/07/2000. Even the place of birth, as stated by the mother of the victim, is different from the place recorded in the school leaving certificate.

10. We are of the opinion that in view of such discrepancies, a *prima facie* case is made out by the applicant in his favour for allowing the present application.

11. In view of the above, the sentence imposed upon the applicant is suspended during the pendency of this appeal and it is directed that he shall be released on bail on the same conditions as imposed by the Trial Court, during pendency of the trial.

12. The application is allowed in above terms.