

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

CRIMINAL APPLICATION (APPA) NO. 51/2022 IN
CRIMINAL APPEAL (ST) NO. 8714/2021
(State of Maharashtra Vs. Nitin Vishwanath Kankal)

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

Court's or Judge's orders

Mrs. M. Deshmukh, APP for applicant/appellant.

CORAM: VINAY JOSHI AND MRS.VRUSHALI V. JOSHI, JJ.
DATED : 12/10/2022.

Heard the learned APP on the point of grant of leave.

2. Leave to file appeal challenging the order of acquittal dated 05.08.2021 in Special (Child) Case No. 32/2016. The respondent (accused) was charged for the offence punishable under Sections 363, 366, 376(1)(n) and Section 4, 6 of the Protection of Children from Sexual Offences Act ('POCSO'). The prosecution led evidence of three witnesses including victim. The Trial Court while acquitting accused from the offence under Sections 363, 366, has relied on the decision of the Supreme Court in case of *S. Varadrajan Vs. State of Madras, 1965 AIR (SC) 942*. The Trial Court also acquitted accused for the offence punishable under Sections 376(2)(i)(n) by holding that accused has married with victim who was more than 15 years of age at the time of occurrence and thus, case was covered by exception of 2 of Section 375 of the Indian Penal Code. The learned Trial Court held that the

provisions of POCSO Act would not attract since the definition of the term 'child' does not cover a minor wife.

3. We have given thoughtful, consideration to the submission, evidence and the impugned judgment and order. Date of birth of victim was 10.04.1999 whilst the alleged occurrence took place after 02.05.2015, meaning thereby, victim was above 16 years of age at the time of incident. The victim in her evidence stated that she was in love with accused and at her own wish, they ran away to Pune. She also admitted that she had voluntarily performed marriage with accused and stayed with him.

4. The learned APP has canvassed that since admittedly there was sexual relation and the victim was below 18 years, the provisions of POCSO Act would squarely apply. It is pointed that the term 'child' as defined under Section 2(d) of the POCSO Act nowhere carves out any exception to the wife, but it simply defines that a child meaning any person below age of 18 years.

5. Having regard to the above submission, we have satisfied to grant leave and accordingly leave is granted and application stands disposed of.

CRIMINAL APPEAL (ST) NO. 8714/2021

1. Heard.

2. Admit.

3. Action under Section 390 of the Code of Criminal Procedure be taken.

4. The learned Sessions Judge shall release accused

on bail on his furnishing P.R. Bond of Rs. 5,000/- with surety in the like amount.

5. R. and P. has already been received.

(MRS. VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)

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