

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO. 1011 OF 2022
IN
CRIMINAL APPEAL NO. 152 OF 2022**

Nadim Ajij Shaikh

..APPLICANT

VERSUS

State of Maharashtra and Another

..RESPONDENTS

....

Mr. L.K. Pradhan, Advocate for applicant

Mr. N.T. Bhagat, A.P.P. for respondent no.1 – State

Ms. Shital Salunke, Advocate for respondent no.2 (appointed)

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CORAM : R.G. AVACHAT, J.

DATE : 28th APRIL, 2023

PER COURT :

1. Heard.

2. The applicant has been convicted for the offence punished therefor as under :-

Section	Act	Imprisonment	Fine	In default
376(2)	I.P.C.	R.I. for 10 years	5,000/-	S.I. for 1 month
4	POCSO	R.I. for 10 years	5,000/-	S.I. for 1 month
6	POCSO	R.I. for 20 years	30,000/-	S.I. for 1 month
8	POCSO	R.I. for 3 months	2,000/-	S.I. for 2 weeks
12	POCSO	R.I. for 1 year	1,000/-	S.I. for 1 week

Substantive sentences are to be run concurrently.

3. At the relevant time the applicant was nineteen years of age. The victim is stated to be little over sixteen years of age. The applicant disputes the age of the victim. The evidence indicates that both, the applicant and the victim were emotionally involved. They eloped and stayed together for about eight days. It further appears that the applicant wanted to marry the victim. It would have been an interfaith marriage.

4. The applicant has been sentenced for twenty years of imprisonment for the offence punishable under Section 6 of the POCSO Act while minimum sentence for the said offence is of ten years. The applicant is in jail for little over one year and eight months. It also appears that principle of proportionality has not been adhered to considering the age of the applicant. The appeal is of the year 2022. It will not have its turn for final hearing at least for next five years. Pending trial he was on bail.

5. The fine amount has been deposited. Considering the age of the applicant being twenty one years and the fact that the appeal is not likely to be heard in the immediate future and he having been behind the bar for little over one and half year, the Court is inclined to allow the application although learned counsel appointed to represent the victim and learned A.P.P. have strong reservation to grant the relief.

6. In view of above, the execution of substantive sentence of imprisonment to stand suspended, pending the appeal. The applicant be released on his executing P.R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

7. Fees of Ms. Shital Salunke, learned counsel, appointed to represent Respondent No.2 – victim is quantified to Rs.7,000/- (Rupees Seven Thousand). Criminal application stands disposed of accordingly.

(R.G. AVACHAT, J.)

SSD