

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1085 OF 2023

IN CRIMINAL APPEAL NO. 239 OF 2023

Balu @ Shivaji Pandit Gawande
Age : 25 yrs, occ : rickshaw driver
R/o Anusayanagar, Soygaon,
District Aurangabad

Applicant

Versus

1. The State of Maharashtra
2. XYZ (victim)

Respondents

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Mr. Balraj Prakash Pande, Advocate for the applicant.
Mr. R.D. Sanap, A.P.P. for respondent No.1.
Ms. Harsha Lomate, Advocate for respondent No.2 (appointed).

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CORAM : SANDIPKUMAR C. MORE, J.

Dated : 8th November 2023

Order :

1. The applicant i.e. the original accused is seeking suspension of his substantive sentence of imprisonment imposed upon him by the Special Judge, Aurangabad in Special Case (POCSO) No.108/2019 vide judgment and order dated 13.02.2023, whereby he is convicted for the offences punishable under Sections 363, 376 (2) of the Indian Penal Code and under Section 4 (2) of the Prevention of Children from Sexual Offences Act. The maximum sentence of imprisonment of the applicant appears to be of 20 years.

2. Learned Counsel for the applicant submits that the prosecution could not satisfactorily prove the age of victim being of 13 years on the date of incident. According to him, she was around 18 years of age on that day. He pointed out that the applicant was 25 years at the time of incident and there was love affair between him and the victim. According to him, the evidence of victim clearly indicated that she ran away with the applicant and sexual relations between them were with consent. He relied on the following judgments :

*(i) Ravi Anandrao Gulpude vs State of Maharashtra
2017 ALL MR (Cri) 1509*

*(ii) Navin Dhaniram Baraiye vs State of Maharashtra
2018 ALL MR (Cri) 4919.*

3. On the contrary, learned Counsel for the victim as well as learned A.P.P. strongly opposed the application on the ground that the learned trial Court, by considering the entire evidence on record, has convicted the applicant/accused and considering gravity of the offence, the applicant is not entitled for such suspension and his release on bail, during pendency of this appeal. Learned A.P.P. also relied on the judgment in the case of *Bhagwan Singh vs Dilip Kumar @ Deepu @ Depak and another* reported in *2023 AIR (SC) 4165*.

4. Heard rival submissions. Also perused the documents on record alongwith copies of depositions of

witnesses.

5. Though the learned trial Court found that the victim was around 13 years old at the time of the incident, but, there are certain facts on record which create doubt about her real age. It is also significant to note that the victim herself in her evidence stated that she was having love affair with the applicant. Moreover, at the time of incident she herself had gone to the applicant, who had given her mobile phone, which was snatched by her father. Further, she has clearly deposed that she slept with the applicant and they had physical relations at the relevant time. She has not stated that applicant used force to establish such physical relations. On the contrary, it has come on record that the victim remained in company of applicant without making hue and cry for around 4 to 5 days during which they travelled to Pune and Aurangabad. Even in the medical history narrated by the victim she admitted that she was having love affair with the applicant. This Court, in so many matters, has considered the aspect of love affair between the victim and accused while releasing the accused on bail, specially considering his future prospects.

6. In the instant case, the applicant/accused was on bail during the trial which he did not misuse in any manner.

Therefore, considering his age which is around 25 years and his future, the following order is passed.

ORDER

- (i) The application is hereby allowed and the substantive sentence of imprisonment for the offence punishable under Sections 363, 376(2) of the Indian Penal Code and under Section 4 (2) of the Prevention of Children from Sexual Offences Act in Special (POCSO) Case No.108/2019 imposed upon the applicant by the learned Special Judge, Aurangabad vide judgment and order dated 13.02.2023, is hereby suspended during the pendency of this appeal subject to deposit of fine amount within period of one week.
- (ii) Applicant be released on bail on execution of his P.R. bond of Rs. 25,000/- with one or more solvent sureties in the like amount.
- (iii) Bail in lower Court.
- (iv) The application is accordingly disposed of.
- (v) The legal fees of learned Counsel for respondent No.2 be quantified as per rule.

(SANDIPKUMAR C. MORE, J.)