

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

**CRIMINAL APPLICATION NO.1108 OF 2023 IN
CRIMINAL APPEAL NO.274 OF 2023**

Golu @ Chotu Ramkishan Rathod ... **APPLICANT**

VERSUS

The State of Maharashtra ... **RESPONDENT**

.....
Mr. Satej S. Jadhav, Advocate for applicant
Mr. A.S. Shinde, A.P.P. for respondent No.1
Mr. Rahul M. Gaikwad, Advocate for respondent No.2 in Appeal
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CORAM : R.G. AVACHAT, J.

DATE : 4th MAY, 2023

ORDER :

This is an application for suspension of sentence of imprisonment. The applicant has been convicted for the offences punishable under Sections 363, 366-A, 344, 323 and 504 of the Indian Penal Code and Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act and therefore, sentenced to suffer various terms of imprisonments and fine with default stipulation. The applicant is to undergo maximum term of imprisonment of 20 years.

2. Heard. Learned counsel for the applicant would

submit that, it was a consensual relationship. The prosecution did not adduce clinching evidence to suggest the victim was below 18 years of age at the relevant time. In fact, both the applicant and the victim had stayed together as husband and wife for about 22 months. It is only on intervention of parents of the victim they came to be separated. The victim has now been married and leading happy married life. The applicant is in jail for over 2 ½ years. He was just 21 years of age at the relevant time. It will take not less than 6 – 7 years for the present appeal to come up for hearing by its turn. He, therefore, urged for grant of the application.

3. The learned A.P.P. and the learned counsel for the respondent No.2 would, on the other hand, submit that, evidence of the victim, her father and the school record would indicate the victim was just little over 15 years of age at the relevant time. Her consent, if any, is therefore, irrelevant. The victim gave details as to how the applicant kidnapped her and kept in detention besides sexually exploiting her many a time during such period. Both the learned counsel, therefore, urged for rejection of the application.

4. Considered the submissions advanced. Perused the evidence of the victim and other witnesses. The evidence of the

victim before the Court is replete with improvements over her statement under Section 164 of the Code of Criminal Procedure and the statements recorded by Child Rights Committee. Along with the applicant, his parents, a brother and husband of his sister were also prosecuted for having kidnapped the victim. Except the applicant, all others have been acquitted. The State appears to have preferred no appeal. Close reading of the evidence of the victim would indicate that, on the given day, i.e. on 16/12/2019, the victim left the house under the pretext of visiting hospital for medical treatment. Her brother had accompanied her. On the way to the hospital, she asked the brother to wait at a particular place and she left under the pretext to meet her friend. She left the company of her brother for no return. The same indicates the victim to have joined the company of the applicant (eloped). Both of them stayed at 2 – 3 places in the State of Madhya Pradesh for about 22 months. The same speaks in volumes, suggesting it being a consensual relationship.

5. On the question of age of the victim, her own evidence is hit by hear-say. Her father did not give her date of birth. Although school leaving certificate was produced in evidence, a person who gave the victim's date of birth for securing her admission in the school has not been examined.

Admittedly, the applicant was just 21 years of age at the relevant time. He is behind bars for little over 2 ½ years. The victim has now got married and is leading happy married life. It will take time of not less than 7 years for the appeal to come up for hearing by its turn. In these facts and circumstances, it is desirable to allow the application. Hence the order :

ORDER

(a) The application is allowed.

(b) Pending the appeal, the execution of substantive sentences of imprisonment imposed upon the applicant by the learned Additional Sessions Judge (Fast Track Special Court), Jalgaon in Special (POCSO) Case No.229 of 2021 by judgment and order dated 12/10/2022 to stand suspended and the applicant be released on bail on executing P.R. bond in the sum of Rs.15,000/- (Rupees fifteen thousand) with one surety in the like amount.

(c) The fees of the learned Advocate appointed to represent respondent No.2 is quantified at Rs.7,000/- (Rupees Seven thousand).

(R.G. AVACHAT, J.)

fmp/-