

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1708 OF 2023

IN CRIMINAL APPEAL NO. 390 OF 2023

Shivaji Bhaurao Suryawanshi

Age : 37 yrs, occ : labour

R/o Brahmani, Taluka Rahuri

District Ahmednagar

Applicant

Versus

1. The State of Maharashtra
Through Rahuri Police Station,
District Ahmednagar

2. XYZ

Respondents

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Mr. Chaitanya C. Deshpande, Advocate holding for

Mr. Suyog S. Rathi, Advocate for the applicant.

Mrs. D.S. Jape, A.P.P. for respondent No.1-State.

Mr. S.A. Ambilwade, Advocate for respondent No.2. (appointed
through Legal Aid)

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CORAM : SANDIPKUMAR C. MORE, J.

Dated : 30th November 2023

Order :

1. The applicant i.e. the original accused in Special Case No.81/2022, is seeking suspension of his substantive sentence of imprisonment during the pendency of this appeal and his release on bail. The record shows that the present applicant/accused has been convicted in the aforesaid special case for the offences punishable under Sections 376(3), 376(2) (n), 363, 366(A), 506 of the Indian Penal Code and under

Sections 4,6,8 and 12 of the Protection of Children from Sexual Offences Act, 2012. The maximum sentence of imprisonment imposed upon the applicant is Rigorous Imprisonment for 20 years.

2. The learned Counsel for the applicant submits that the learned trial Court has definitely erred in convicting the applicant/accused for the offences under aforesaid sections and thereby ignored the important fact that there was love affair between the applicant and victim. He pointed out that the victim in her cross-examination has given vital admissions saying that she was in love with the applicant, and therefore, she remained in company of the applicant for considerable period of 15 to 20 days and also consented for the physical relationship. He further pointed out that the learned trial Court also did not consider the evidence in respect of age of victim in proper manner. He relied on the judgment of this Court in the case of ***Satesing @ Aba Manga Thakare (Bhil) vs State of Maharashtra*** delivered on 19th April 2022 in Criminal Appeal No. 814 of 2018.

3. On the contrary, learned A.P.P. as well as learned Counsel for respondent No.2/victim strongly opposed the application on the ground that there was vast difference

between the ages of applicant and victim. The applicant was aged around 37 to 40 years whereas the victim was below 15 years of age. They pointed out that the applicant was already married, and therefore, there was no intention on his part to marry with the victim, but he only wanted to exploit her sexually.

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

5. Admittedly, the applicant has been convicted as mentioned above and he was an Under Trial Prisoner. On going through evidence of the victim, it clearly indicates that the victim was in love with the applicant/accused and she herself went with the applicant and had sexual intercourse with him without any resistance. However, it appears that the applicant compelled the victim to have sexual intercourse with him by pretending that he would commit suicide if she refuses. It has also come on record that he had consumed poison on account of quarrel between himself and his wife. Thus, it appears that there was an element of threatening during the relationship of the applicant and victim. Moreover, it appears that the age of victim was only 14 years and 10 months, and therefore, even if she fled with the applicant on

her own, then also her consent would be immaterial. Moreover, the applicant was already married, and therefore, the act of the applicant of establishing love relationship with the victim itself indicates that he was only trying to exploit her sexually without any intention of marriage. Even otherwise also, considering the age of the applicant he was not having an honest intention in his relationship with the victim. However, the evidence on record in respect of the age of victim appears to be reliable as per the discussion by the learned trial Court, and therefore, the above-mentioned judgment relied upon by the learned Counsel for the applicant on the aspect of age proof cannot be made helpful at this juncture. Further, in that judgment also there was not much difference between the ages of the accused and victim. Thus, considering all these aspects, the application is hereby rejected. The legal fees of the learned Counsel for respondent No.2 appointed through the Legal Services Authority be quantified as per rule. The application is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)