

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

**CRIMINAL APPLICATION NO. 2660 OF 2023**

**IN CRIMINAL APPEAL NO. 660 OF 2023**

Sandip Premal Patil  
Age : 24 yrs, occ : labour  
R/o Kundne (Varkhedi),  
Tal. & District Dhule

Applicant

Versus

1. The State of Maharashtra  
Through CIDCO Police Station,  
Aurangabad

2. XYZ (victim)

Respondents

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Mr. N.L. Choudhari, Advocate for the applicant.  
Mrs. D.S. Jape, A.P.P. for respondent No.1.  
Ms. Nilesh Desale, Advocate for respondent No.2.

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**CORAM : SANDIPKUMAR C. MORE, J.**

**Dated : 31<sup>st</sup> October 2023**

**Order :**

1. Heard rival submissions.
2. The applicant, who is the original accused, is seeking suspension of his substantive sentence of imprisonment for the offence punishable under Sections 376, 509 and 323 of the Indian Penal Code and Sections 4 and 12 of the Prevention of Children from Sexual Offences (POCSO) Act in Special (POCSO) Case No. 56/2019 vide judgment and order

dated 14.07.2023. It appears that maximum punishment of 12 years has been imposed alongwith the other sentences of imprisonment on the applicant.

3. The learned Counsel for the applicant submits that medical report of the victim is negative and the Investigating Officer also did not record statements of neighbours. He pointed out that the victim in respect of the alleged incident of forcible sexual intercourse took place in the month of December 2018 lodged the report after about 4 months and there is no explanation of delay. According to him, it was purely a case of love affair between victim and the applicant accused.

4. On the contrary, the learned A.P.P. as well as learned Counsel for the victim strongly opposed the application on the ground that the conviction is recorded by the learned Trial Court after considering the entire evidence on record. Further, the victim has already denied that there was love affair between herself and the applicant. As such, they prayed for rejection of the application.

5. Heard rival submissions. Also perused entire documents on record. It appears from the impugned

judgment and though the victim has denied that there was love affair between herself and the applicant, but it is significant to note that the victim did not disclose the incident of alleged forcible sexual intercourse which took place in the month of December 2018, immediately. In fact, she disclosed the same after about 4 months. Further, she has already stated in the supplementary statement that at the time of alleged sexual intercourse the applicant had provided mobile phone to her for talking to him. Though she has deposed that she had to talk with the applicant as he had threatened to disclose the fact of relationship to her relatives, but in the supplementary statement dated 30.03.2019 she has stated that she was continuously talking with the applicant in absence of her parents on the said cell phone. Most importantly, the applicant was on bail throughout the trial and he did not misuse his liberty. As such, from all these aspects a possibility of love affair between victim and the applicant cannot be ruled out. Therefore, following order is passed.

#### **ORDER**

- (i) The application is hereby allowed and substantive sentence of imprisonment for the offence punishable under Sections 376, 509 and 323 of the Indian Penal

Code and Sections 4 and 12 of the Prevention of Children from Sexual Offences Act in Special (POCSO) Case No.56/2019 imposed upon the applicant by learned Additional Sessions Judge vide judgment and order dated 14.07.2023 is hereby suspended during the pendency of this appeal.

- (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.

**(SANDIPKUMAR C. MORE, J.)**