

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO.2867 OF 2022
IN
CRIMINAL APPEAL NO.629 OF 2022**

Ravindra @ Ritesh Bapu Nikumbh	..Applicant
Vs.	
The State of Maharashtra and anr.	..Respondents

Mr.A.R.Syed, Advocate for applicant
Mr.N.T.Bhagat, APP for respondent no.1
Mr.R.M.Gaikwad, Advocate for respondent no.2

**CORAM : R.G. AVACHAT, J.
DATE : MARCH 30, 2023**

ORDER :-

Heard.

2. The applicant/appellant herein has been convicted for the offences punishable under Sections 4 and 6 of the Protection of Children from Sexual Offences Act and Section 3(1)(w)(i) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The maximum period of sentence awarded is twenty years for the offence under Section 6 of POCSO Act.

3. The FIR was lodged by the victim herself. In the FIR, the victim has stated her age as 18 years. Unfortunately, the victim passed away before she was examined as witness in the case. It

would be a question of law, whether the contents of the FIR lodged by her would be admissible in evidence to favour the prosecution.

4. Admittedly, it was a love affair between the applicant and the deceased - victim. The deceased had even conceived. The fetus had to be aborted. The DNA report indicates that the applicant was the biological father of the fetus.

5. According to learned counsel for the applicant, the Medical Officer, who is said to have obtained the applicant's blood sample for DNA, has not been examined. Learned counsel representing respondent no.2 would, however, point out the evidence of the Police Constable, who carried the blood sample of the applicant to the laboratory for DNA profiling. The evidence of the said witness went unchallenged since said witness was not cross-examined.

6. Since it is a case of consensual relationship, the only question is, whether the victim was below 18 years of age when the offence did take place. The extract from the birth register maintained by the Village Panchayat was placed on record. Based on the evidence of PW 8 – Dharma Wagh, Gram Sevak, said entry

came to be admitted in evidence. There is, however, nothing to suggest as to based on whose information, said entry was made.

7. Learned Counsel for respondent no.2 also points out that the father of the victim was tried to be pressurised by the applicant and his family members to turn hostile. He had, therefore, to make a complaint in that regard to the trial Court on 04.06.2022.

8. The appeal is of 2022. When the offence took place, the applicant was 20 years of age. He is behind the bars for little over 8 months. The appeal is not likely to come up for hearing in the near future. True, unfortunately, the victim could not be examined since she was no more. The fetus had been aborted before she passed away. The present crime has no connection with the cause of death of the victim.

9. Since the applicant was 20 years of age when the offence took place, considering the fact that the appeal is not likely to come up for hearing in the immediate future and that there was no evidence of the victim as she was no more, this Court is inclined to suspend execution of the substantive sentence of imprisonment.

10. During pendency of the appeal, the execution of substantive sentence of imprisonment to stand suspended. The applicant be released on executing P.R. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

11. The application stands allowed and disposed of.

12. Fee of learned counsel appointed to represent respondent no.2 is quantified at Rs.7,000/- (Rupees Seven Thousand), to be paid by the High Court Legal Aid Sub-Committee, Aurangabad.

[R.G. AVACHAT, J.]

KBP