

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICATION NO.3141 OF 2022
IN
CRIMINAL APPEAL NO.689 OF 2022**

Bhagwan Shankar Karpe

..Applicant

Vs.

The State of Maharashtra
and anr.

..Respondents

Mr.D.S.Patil, Advocate for applicant

Mr.K.N.Lokhande, APP for respondent no.1

Mr.A.S.Deshpande, Advocate for respondent no.2

CORAM : R.G. AVACHAT, J.

DATE : APRIL 11, 2023

ORDER :-

Heard.

2. The applicant/appellant herein has been convicted for the offences punishable under Sections 354, 376 read with 511 and 376 AB read with 511 of Indian Penal Code and Section 11(ii) punishable under Section 12, Section 7 punishable under Section 8 and Section 9(m) punishable under Section 10 of Protection of Children from Sexual Offences Act. The maximum period of sentence awarded against the applicant is 10 years for the offence under Section 376 read with 511 and 376 AB read with 511 of Indian Penal Code.

3. Learned APP and learned counsel appointed to represent respondent no.2 have serious reservations to allow the application. According to them, the victim was little over 5 years of age. The applicant was forty plus. The report of the incident was lodged promptly. Both of them, therefore, urged for rejection of the application.

4. Learned counsel for the applicant would, on the other hand, submit that the medical examination report of the victim does not support the prosecution. The victim, in her statement under Section 164 of the Code of Criminal Procedure, claimed it to be an incident of sexual assault, while, before the Court, the case as regards attempt of sexual assault, was made out. The Medical Officer has rightly reserved opinion, pending the C.A. report. The C.A. report does not support the prosecution case. According to learned counsel for the applicant, a false FIR was lodged since there was some other reason. The applicant was neighbor. The daughter-in-law of PW 1 used to visit the applicant's residence. It was suspected that both of them had emotional relationship. To ensure that the applicant is driven out of that area and is taught a lesson, a false FIR is lodged.

5. Considered the submissions advanced. The victim, was 5 years of age at the time of the alleged offence. In her statement under Section 164 of the Code of Criminal Procedure, the victim claimed to have been deflowered by the applicant. When the applicant was little over 40 years of age and the victim was 5 years of age, there ought to have been injuries and evidence of sexual assault to be recorded in the victim's medical examination report. The Medical Officer reserved final opinion, pending receipt of the C.A. report.

6. Admittedly, the C.A. report does not support the prosecution case. The applicant is in jail for little over three and half years. The punishment provided for attempt to commit offence of aggravated sexual assault or rape, is punishable with half of the maximum imprisonment provided for the main offence. As such, it was within the discretion of the Court to impose a particular quantum of sentence in the given facts and circumstances of the case.

7. The applicant has wife and a minor child to look after. The appeal is of 2022. It is not likely to come up for hearing by its turn in the near future. The case of the applicant that he has been

falsely implicated, may even turn out to be true on re-appreciation of the evidence, while hearing the main appeal. As such, a case for suspension of execution of the substantive sentence is made out.

8. During pendency of the appeal, the 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.

9. The applicant shall not enter village Moikheda, Tq. Jamner, Dist. Jalgaon, and adjoining villages thereof, pending hearing of the appeal.

10. The application stands disposed of.

11. Fee of learned counsel appointed to represent respondent no.2 is quantified at Rs.8,000/- (Rupees Eight Thousand).

12. Parties to act upon authenticated copy of this order.

[R.G. AVACHAT, J.]

KBP