

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

**CRIMINAL APPLICATION NO.3404 OF 2023
IN CRIMINAL APPEAL NO.821 OF 2023**

Pradip s/o Navnath Gade,
Age : 24 years, Occu.: Education,
R/o.: Dadegaon, Jahagir,
Tq. Paithan, Dist. Aurangabad ... APPLICANT

VERSUS

1. The State of Maharashtra
2. X.Y.Z. ... RESPONDENTS

....
Advocate for the Applicant : Mr. N. S. Ghanekar
A.P.P. for Respondent No.1-State : Mr. R. B. Bagul
Advocate for Respondent No.2 : Mr. Niraj P. Chandiwal (Appointed)
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**CORAM : SANDIPKUMAR C. MORE, J.
DATED : 03/11/2023.**

P. C. :

1. Heard rival submissions.
2. The applicant, who is original accused, is seeking suspension of his substantive sentence of imprisonment imposed upon him vide judgment and order dated 25/08/2023 in Special Case (POCSO) No.190 of 2019, passed by Special Judge, POCSO, Aurangabad. The learned trial court has convicted the applicant for the offence punishable under Section 376(2) of IPC and

sentenced to suffer R.I. for 10 years and to pay fine of Rs.10,000/- i/d S.I. for one month.

3. The learned counsel for the applicant submits that though the victim was minor at the time of incident, but there was love affair between herself and the applicant / accused. He pointed out that the applicant was intending to marry with the victim, but the same could not be materialized due to oppose from his family. According to him, the victim even after such oppose, exchanged chits with applicant and on her own, decided to run away with him. He pointed out that the applicant was on bail throughout the trial and has already paid the fine amount.

4. On the contrary, the learned A.P.P. as well as the learned counsel for respondent No.2 - 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. The victim has also deposed against the applicant and there is medical evidence supporting her version. According to them, even though it is presumed that there was consensual relationship between the victim and applicant but it was on the pretext of false promise of marriage.

5. Admittedly, the applicant was on bail throughout the trial and he has also deposited the fine amount. Though the applicant

is sentenced to suffer R.I. for 10 years and that the victim has stated as per the prosecution story, but in her cross-examination she has clearly admitted that she was having love affair with the applicant and they wanted to marry with each other. It appears that due to oppose from the family of the applicant, their marriage could not be solemnized. Further, even after such oppose, the victim was in continuous contact with the applicant through letters which they exchanged between themselves. Ultimately, victim on her own, had left the house to run away with the applicant.

6. This court in so many cases has taken lenient view against the accused for releasing him on bail whenever it was found that there was love affair between himself and the victim. In the instant case also the fact of love affair between victim and the applicant has come on record through victim only. The age of the applicant appears to be only of 24 years and therefore, considering his future prospects, following order is passed

ORDER

- (i) The application is hereby allowed and substantive sentence of imprisonment imposed upon the applicant vide judgment and order dated 25/08/2023 in Special Case (POCSO) No.190 of 2019, passed by Special Judge, POCSO, Aurangabad is hereby suspended during the pendency of this appeal.

- (ii) The 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 fees of learned counsel appointed for respondent No.2 – victim, be quantified and paid as per rules.
- (v) Application is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)