

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

**APPLICATION FOR LEAVE TO APPEAL BY STATE
NO.275 OF 2019**

The State of Maharashtra,
Through: Udgir Police Station (Rural),
Dist-Latur

...APPLICANT

VERSUS

Bharat Bhimrao Konale,
Age-22 years, Occu:Agri.,
R/o-Shekapur, Tq-Udgir,
Dist-Latur.

...RESPONDENT

...
Mr. S.D. Ghayal A.P.P. for Applicant.
...

**CORAM: SMT. VIBHA KANKANWADI AND
ABHAY S. WAGHWASE, JJ.**

DATE : 13th JULY, 2023

ORDER :

1. Present Application has been filed by the prosecution seeking leave to appeal under Section 378(1)(b) of the Code of Criminal Procedure challenging the acquittal of the respondent by the learned Additional Sessions Judge, Udgir in Sessions Case

No.09 of 2012 of the offence punishable under Sections 376, 506 of the Indian Penal Code, on 9th September 2019.

2. We have heard Mr. Ghayal, learned APP appearing for the State. With the able assistance of the learned APP, we have gone through the material which was before the learned trial Judge.

3. The prosecution story is that when informant was admitted in Ward No.2 at Government Hospital, Udgir on 19th August 2011, police have recorded her statement. She disclosed that the accused was residing in front of her house. She was visiting the house of the accused. Accused used to follow her and disclose that he wants to marry her. It appears that the informant had the knowledge that the accused was intending to perform the marriage with his niece, but on that count the accused gave evasive reply. A year prior to the First Information Report (for short "the FIR"), when she had gone to answer nature's call, the accused followed her and by saying that he wants to marry with her, he had physical relations with her forcibly and then gave threat to her. Thereafter also the accused was having forcible sexual intercourse with her by giving promise to marry. She became pregnant. When informant narrated the said fact to her mother, the mother asked accused about the

same and at that time accused promised that he would maintain the informant and therefore, the informant did not lodge any report. A month prior to the FIR, the accused refused to maintain the informant when she was eight months pregnant. She gave birth to the child on 19th August 2011 when she was so admitted at the Government Hospital. Upon the said statement taken by the police, offence was registered vide Crime No.104 of 2011 and the investigation was carried out.

4. After committal of the case, the trial was conducted. Prosecution examined in all eight witnesses to bring home the guilt of the accused. Prosecution has examined two doctors and also relied on DNA report Exhibit-39 which shows that the accused is the biological father and informant is the biological mother of the child.

5. The testimony of the informant has been discarded by the learned Additional Sessions Judge on the ground that her cross-examination would show that the relationship was consensus in nature. We have gone through the cross-examination of the informant. It can be seen that informant was aware about the fact that accused was already married and still she continued

relations with him. Though she contends that when the first act was committed, she was aged 17 years, yet we could not find any conclusive proof establishing her age. Under the said circumstance, we do not find that there is any illegality or perversity in the order passed by the learned trial Judge and the Application deserves to be rejected.

6. The Application stands rejected.

[ABHAY S. WAGHWASE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/JULY23