

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 59 of 2023
IN
CRIMINAL APPEAL NO. 12 OF 2023

Shubham Dhanaji Doifode .. Applicant
Versus
The State of Maharashtra & Anr .. Respondents

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Ms.Yogini A. Ugale for the applicant.
Mr.Sushil Inamdar for respondent no.2.
Mr. S.R. Agarkar, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 24th APRIL 2023

P.C:-

1 Heard learned counsel for the applicant/appellant, the learned APP and the learned counsel for the respondent no.2 – complainant, who is the father of the victim girl, aged 16 years.

2 Perused the impugned judgment under which the applicant stand convicted for committing an offence punishable u/s.376, 363 and 366 of the IPC. He is also convicted for committing an offence punishable u/s.4 and 12 of the POCSO Act. On being convicted under the POCSO Act, he is directed to

undergo Rigorous Imprisonment for 10 years and pay a fine of Rs.5,000/- in default to undergo 1.5 months of Simple Imprisonment. Similar is the sentence imposed on he being convicted u/s.376 of IPC.

3 Sentence is also imposed for being convicted u/s.363, 366 of IPC and Section 12 of the POCSO Act. All the sentences have been directed to run concurrently.

4 The case of the prosecution, which surfaced through the prosecutrix herself is about the love affair. The victim who was approximately 16 years and 1 month, her date of birth being 11/9/2004 on the date of incident, was taking education in XI Std, categorically admitted before the Court that she was on talking terms with the accused and developed intimacy and an affair with him.. She also admitted of meeting the accused often and chatting with him on mobile phone.

5 As far as the incident of 15/10/2020 is concerned, the case of the prosecution is to the effect that the girl was compelled to leave her house by the accused, who abducted her and committed forcible sexual intercourse with her. This, however, has not been conclusively established by the prosecution as the case of the complainant's father itself is to the effect that his daughter, on the guise of visiting urinal, by keeping the light on, gave an impression that she has gone to attend the nature's call, but when she did not return for some point of time and when

they inquired in the locality about the presence of the accused who was also found missing, a complaint came to be lodged.

The victim, in her cross-examination, had clearly admitted that there was a love affair between them.

6 In this background, whether the sexual relationship was consensual on account of this relationship which she shared with the accused, is a matter which has to be appreciated. True it is, that merely because there was friendship and the intimacy described by the victim as 'love affair', it cannot be, by itself presumed that she had consented to the sexual relationship, but several admissions in the cross-examination, give an indication to that effect. Coupled with the other evidence on record, it is *prima facie* revealed that she was not compelled, but on her own, she eloped with the accused and was out almost two days along with him.

7 The applicant is a young boy, aged 20 years and if it is the case of mutual admiration or infatuation and of consensual sex, in that case, he shall not be put to disadvantageous position inconvenience, as his future would be jeopardised if he is directed to undergo the sentence, while his appeal is being admitted and pending for adjudication. In the circumstances, since it is also informed that the applicant was on bail during the trial and he has never misused the liberty, which is an additional factor, which I weigh in his favour, for suspending the sentence imposed on him.

However, while he is released on bail, he shall not, indulge in exerting any influence upon the prosecutrix or upon her family members, while his Appeal is pending for adjudication before the Court.

8 Resultantly, the sentence imposed upon the impugned judgment by the Addl. Sessions Judge, Karad in Special Case No.90 of 2020 dated 17/12/2022 stand suspended.

The applicant is entitled to be released on bail in the sum of Rs.25,000- with one or two sureties in the like amount.

IA stand disposed off.

Since Record and Proceedings are received, I deem it appropriate to expedite the hearing of the Appeal.

(SMT. BHARATI DANGRE, J.)