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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL INTERIM APPLICATION NO. 1544 OF 2023
IN
CRIMINAL APPEAL NO. 549 OF 2023**

Vikas Dilip Jadhav

... Applicant

vs.

The State of Maharashtra and Anr

... Respondents

Mr. Ratnesh Dube-appointed for the Applicant.

Mr. S.V. Gavand, A.P.P for the State.

Mr. Aditya Sawant-appointed for Respondent No. 2.

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.**

DATED : 30th NOVEMBER 2023

P.C. :-

1. Heard learned counsel for the parties.
2. By this application, the applicant seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of his aforesaid appeal.
3. The applicant vide Judgment and Order dated 17th August 2022, passed by learned Additional Sessions Judge, Ratnagiri in Sessions Case No. 03 of 2019, has been convicted for the

offence punishable under sections 363, 376(2)(j), 376(2)(n) of the Indian Penal Code and under section 3 r/w section 4, 5(j)(ii), 5(l) r/w section 6 of the Protection of Children from Sexual Offences Act, 2012(**POSCO Act**). The sentences awarded are as under;

- for the offence punishable under Section 363 of the Indian Penal Code, to suffer rigorous imprisonment for two years and to pay fine of Rs. 2,000/- in default, to suffer simple imprisonment for two months.
- for the offence punishable under Section 376(2)(j) of the Indian Penal Code, to suffer rigorous imprisonment for two years and to pay fine of Rs. 5,000/- in default, to suffer simple imprisonment for five months.
- for the offence punishable under Section 376(2)(n) of the Indian Penal Code, to suffer rigorous imprisonment for ten years and to pay fine of Rs. 5,000/- in default, to suffer simple imprisonment for five months.

- for the offence punishable under Section 3 r/w section 4 of the POSCO Act, to suffer rigorous imprisonment for seven years and to pay fine of Rs. 5,000/- in default, to suffer simple imprisonment for five months.

- for the offence punishable under Section 5(j)(ii), 5(l) r/w section 6 of the POSCO Act, 2012 to suffer life imprisonment and to pay fine of Rs. 10,000/- in default, to suffer simple imprisonment for one year.

All the aforesaid sentences were directed to run concurrently.

4. Perused the papers, and in particular, the evidence of the prosecutrix. At the relevant time, according to the prosecution, the victim girl was a minor, aged 15 years and the applicant, at the relevant time, was about 21 years of age. The prosecution has examined the prosecutrix (PW 2) and her maternal aunt (PW 1), original complainant, to prove offences as against the applicant. A perusal of the evidence of PW 2 prosecutrix shows that she was staying with her maternal aunt since childhood, since her parents had expired; that she had taken admission to the college,

that through her friend 'X' she met 'X's cousin i.e. the applicant and that their friendship developed into a love affair. She has stated that the applicant met her regularly in college and that on 11th September 2018, she left alongwith the applicant and her friend 'X' and went to Bhagwati temple where she got married, by wearing a fake mangalsutra; that pursuant thereto, she and the applicant went to Sankeshwar Karnataka and started staying in his friend's house at Sankeshwar. She has stated that she had physical relationship 2-3 times due to which she became pregnant. PW 2, has further stated that she had not informed that she was below 18 years to the applicant. In the cross-examination, PW 2 has admitted that she had disclosed to the police that the applicant had told her that he was already married and that he had two children; and that, since she loved him, she decided to marry him and did not disclose to the applicant that she was less than 18 years.

5. The question that arises for consideration is whether the applicant was aware that the victim was a minor at the relevant time, having regard to P.W. 2's evidence. The applicant has

examined himself and his mother as defence witnesses and thus the said evidence with respect to the same, will also have to be looked into.

6. Considering the aforesaid and the fact, that the applicant was on bail pending trial for sometime, the application is allowed and the applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of the aforesaid appeal, on the following terms and conditions:-

ORDER

- i) The applicant be enlarged on bail on furnishing P.R.Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;
- ii) The applicant shall report to the trial Court, once in four months on the day/date specified by the trial Court, till the appeal is finally disposed of;
- iii) The applicant shall keep the trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to

time;

iv) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

7. The applicant will be produced before the concerned court who will explain the conditions imposed by us in the order, so as to enable him to comply with the same.

8. The Application is allowed in the aforesaid terms and is accordingly disposed of.

9. All concerned to act on the authenticated copy of this order.

(GAURI GODSE, J.)

(REVATI MOHITE DERE, J.)