

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.1665 OF 2023
IN
CRIMINAL APPEAL NO.507 OF 2023

Vikas Prakash Udamale .. Applicant/Appellant

Versus

The State of Maharashtra & Anr. .. Respondents

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Mr.Debjyoti Talukdar for the Applicant/Appellant.

Ms.Keral Mehta, Appointed Advocate for the Respondent No.2.

Mr.S.R.Agarkar, A.P.P. for the State/Respondent.

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CORAM: BHARATI DANGRE, J.

DATED : 22nd AUGUST, 2023

P.C:-

1. By the present application, the Applicant/Appellant, who stands convicted for committing an offence under Section 363 of IPC vide the impugned judgment delivered by the Special POCSO Court, Solapur in Sessions Case No.78 of 2016, seeks suspension of sentence and his release on bail.

Pertinent to note that the Appeal filed by the Appellant is admitted on 02/05/2023, on the grounds stated therein.

On the notice being issued to respondent No.2, she is represented by the learned counsel Ms.Keral Mehta.

2. The Applicant face a charge under Sections 363, 366A and 376 of IPC and under Section 4 of the POCSO Act. The prosecution accuse the Applicant of kidnapping the victim girl, alleged to be minor, and it is alleged that he took her to different places and she continued to reside with him from 15/12/2015 to 28/12/2015. He is also accused of committing sexual intercourse with her.

3. On the investigation being complete and the statement of the victim girl being recorded under Section 164 of Cr.P.C. and the relevant material being compiled in the charge-sheet, the Applicant faced the trial.

On scrutinizing the evidence placed before the Court, a conclusion was recorded in the impugned judgment that the Accused had intention to take the victim with him and to make her to stay with him and he played active role and persuaded her to accompany him and, since, she was under 18 years of age, he is guilty of committing the offence of kidnapping, as he took her from the lawful guardianship of her parents. However, the Court did not find the Accused guilty for committing the offences under Sections 376, 366-A of IPC and under Section 4 of POCSO Act, since the prosecution failed to prove the said charges.

On finding guilty under Section 363 of IPC, the Accused was sentenced to suffer R.I. for three years and to pay fine of Rs.10,000/-, in default to suffer S.I. for one year.

4. The learned counsel for the Appellant would submit that the prosecution case has several loopholes and he would rely upon a chit written by the victim to her parents, which was

exhibited as Exh.15, to falsify the claim of the prosecution that she accompanied the Accused. He would also rely upon the testimony of the victim's father, which belie the case of the prosecution.

In any case, according to me, the prosecution has not established that the victim was minor and the inconsistency in the version of the prosecution witnesses, definitely warrant benefit of doubt in his favour.

In the wake of the material placed before the Court, in form of twelve witnesses, since the prosecution has failed to establish the very object of kidnapping the victim girl, for the purpose of establishing sexual relationship and, since, according to me, he is acquitted of the said charge, the conviction under Section 363 of IPC, prima facie, is not sustainable, in the wake of the evidence on record.

The learned counsel for Respondent No.2 opposed the prayer in the application on the ground that the prosecution has established it's case beyond reasonable doubt and the conviction is rightly accorded for kidnapping a minor girl. In my considered opinion, the argument of the learned counsel for the Appellant deserve an appreciation at the stage, when the Appeal will be heard and the evidence led before the Special Court would be carefully looked into. However, at present, considering the fixed term of sentence imposed upon the Applicant under the impugned judgment, in the light of the decision of the Apex Court in the case of *Bhagwan Rama Shinde Gosai & Ors. Vs. State of Gujarat*¹ and since, the sentence is minuscule in nature, I am inclined to grant the application.

¹ (1999) 4 SCC 421

5. As a result, the sentence imposed vide the Judgment dated 10/03/2023, on being convicted under Section 363 of IPC, is suspended.

The Applicant be released on bail on furnishing P.R. Bond to the extent of Rs.25,000/- with one or more sureties in the like amount.

6. The Application stands disposed off in the aforestated terms.

(SMT. BHARATI DANGRE, J.)