

rajshree

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

**INTERIM APPLICATION NO.2317 OF 2023
IN
CRIMINAL APPEAL NO.728 OF 2023**

Saifu Sayyed Shaikh	]	..	Applicant
vs.			
State of Maharashtra & Anr.	]	..	Respondents

Mr.Ashish Pawaskar, for the Applicant.

Mr.Y.M. Nakhwa, APP for the State.

Mr.Shashank Mangle for Respondent No.2.

Mr.Nayamat Ramzan Kalekar, Respondent No.2 present.

API Shinde, Ratnagiri City Police Station present.

CORAM : BHARATI DANGRE, J

DATE : 9th October, 2023.

P.C.

1] By the Interim Application filed by the Appellant, whose Appeal is admitted, he seek suspension of sentence of conviction and his release on bail, in the wake of the Judgment delivered by the Additional Sessions Judge on 18.05.2022 in Special Case No.7/2019.

2] Heard the learned counsel for the Applicant as well as the learned counsel for Respondent No.2.

The Applicant was tried for committing an offence punishable under Section 376(3) of the IPC alongwith Section 5(j)(ii) read with 6 of the POCSO Act.

It is the case of the prosecution that the complainant who had a daughter whose age was given as 15 years 1 month and who was studying in 10th Standard, was found to have conceived. When taken in confidence, she disclosed that she had physical relationship with her friend and she disclosed the name of one person. But at the subsequent point of time, before CWC, she disclosed the name of the present Applicant. She had conceived out of the relationship and the DNA sampling was done in order to establish the parentage. Since it matched with that of the Applicant he was made to face the trial.

3] Finding that the victim was minor, the Applicant is convicted for committing an offence under Section 376(3) of the IPC read with Section 4 and 5(j)(ii) read with Section 6 of the POCSO Act and is sentenced to suffer R.I. for 20 years and to pay fine of Rs.10,000/- and I.d. to suffer S.I. for 6 months.

The impugned Judgment on being challenged through the Appeal has been admitted for adjudication.

In the Application, the Applicant makes a specific statement, which reads thus :

The most important thing regarding the Parties is that the Complainant and her husband had been to the family of the Appellant with proposal of marriage of the Appellant and the victim, while the case was nearly at the closing stages i.e. in November 2022. The Appellant and the victim were married to each other on 20.11.2022 and the same was registered on 26.11.2022, the Marriage was solemnized at Shahuwadi

Kolhapur, and now they have as small kid named Samayra Saifu Shaikh. That both the Appellant and the victim are of young age and the responsibility of the victim and their daughter and the family is on the Appellant now.

4] The victim is present in the Court alongwith her child and she affirmed her marriage with the Applicant, which was solemnized on 20.11.2022.

In the wake of aforesaid, since now the marriage is solemnized between the victim and the Appellant, though he may take consequences of the sentence imposed upon him vide impugned Judgment, I find it harsh to deny him suspension of sentence, taking into account that the child is born out of the wedlock, as on attaining majority the marriage was performed while he was on bail during the trial.

Subject to the stipulations, that the Applicant shall take care of the victim as well as their child, I am inclined to release him on bail, with a clear understanding that, if he fails to discharge his duty as father and husband, the victim will be entitled to seek cancellation of bail by moving application during the pending Appeal.

In the wake of above, following order is passed :

ORDER

- a] Interim Application is allowed.
- b] The conviction imposed upon the Applicant vide the impugned Judgment dated 18.05.2023 in Sessions Case No.07/2019, is hereby suspended during the pendency of the Appeal.
- c] The Applicant Saifu Sayyed Shaikh shall be released on bail in connection with C.R.No.383 of 2018 (SC

No.7/2019) registered with Ratnagiri City Police Station, on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.

(d) The applicant shall report to the Sr. PI of concerned Police Station alongwith the victim once on first Monday of every trimester between 10.00 a.m. to 12.00 noon.

Sr. PI of the concerned Police Station shall ascertain from the victim about the behaviour of the Applicant and if she makes any complaint, to the effect that he is not catering to her daughter as well as herself, then he shall assist her in approaching this court for cancellation of bail.

(e) Upon release, the Applicants shall furnish his contact number and permanent residential address to the Investigating Officer and shall keep him updated in case of any change.

[BHARATI DANGRE, J]