

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 648 OF 2023
IN
CRIMINAL APPEAL NO. 1254 OF 2022

Kunal Alias Kanha Magan Jadhav .. Applicant
Versus
The State of Maharashtra and anr .. Respondent

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Mr.Chetan Deshmukh i/b Ergo Juris for the applicant.
Mr.Arpit N. Mutha for respondent no.2.
Ms.P.N. Dabholkar, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 3rd MAY 2023

P.C:-

IA No. 648 of 2023

1 By the present application, the appellant/applicant seek suspension of sentence imposed upon him by Additional Sessions Judge on 28/6/2022 in POCSO Special Case No. 127/2020.

The applicant came to be charged in committing an offence of rape on a minor girl aged 14 years, and therefore, he was made to face the charge under Section 376(2)(f), 376 (3) of IPC and Section 4 and 6 of the POCSO Act.

Ashish

The victim along with her mother entered into the witness box, and it is revealed that the accused is the cousin brother of the informant (PW3). She deposed that her daughter was aged 14 years and when she noticed her vomiting, and was taken for medical examination it was revealed that she has conceived. The girl disclosed that she has conceived the pregnancy from the accused. Upon the DNA analysis being carried out of the foetus, which was aborted, it was found that the accused along with the prosecutrix are the biological parents.

2 Despite a stand being specifically taken that the victim girl had a love affair with a third person, and they were in physical relationship, the learned Judge did not accept the said defence because the DNA at Exhibit-13 clearly established the applicant to be the father of the foetus. Mere discrepancy, or inconsistency in the version of the prosecution witnesses were not found to be sufficient to acquit the accused. Considering that the victim girl was below 16 years, the applicant/accused was sentenced to suffer RI for 20 years and to pay fine of Rs. 25,000/-, in default to suffer SI for one year. No separate sentence came to be awarded under the POCSO Act, in the wake of Section 42 of the said Act.

3 The counsel appearing for respondent no.2 i.e. the complainant accord his no objection, if the applicant is released on bail and the said statement is to be appreciated in the background of the fact that the applicant/accused is the maternal

uncle of the prosecutrix, and no wonder such a statement is coming forthwith.

However, I do not think that the said statement is sufficient enough to secure the release of the applicant on bail and for suspending his sentence, since the learned Judge has recorded a finding based on the evidence brought on record through the prosecution witnesses.

As a result the Interim Application stands rejected.

(SMT. BHARATI DANGRE, J.)