

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

**INTERIM APPLICATION NO. 1078 OF 2023
IN
CRIMINAL APPEAL NO. 879 OF 2022**

Kartik Kashinath Karagir	... Applicant
Versus	
State Of Maharashtra And Anr.	...Respondents

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Mr.Priyal G Sarda, Advocate for the Applicant.

Mr. Prashant Patil for Respondent No.2.

Ms. P. N. Dabholkar, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 6th JUNE 2023

PC :

1. This is an application for suspension of sentence and grant of bail during the pendency of Criminal Appeal preferred by the Appellant/Applicant.

2. The applicant is convicted vide judgment and order dated 11th July 2022 passed by learned Additional Sessions Judge, Pune in Special Case Child Prot. No.74 of 2017 for offences punishable under Sections 363, 376(2)(i) of Indian Penal Code and Section 4 of the Protection of Children from Sexual Offences Act, 2012. Maximum sentence imposed while convicting the appellant is 10 years

imprisonment.

3. The victim has alleged that she was subjected to sexual assault on 20th November 2016. She had accompanied the accused to the place of incident where the alleged sexual act was committed by accused.

4. The applicant was on bail during the trial. Pursuant to the judgment of conviction, he is in custody since last 11 months.

5. Learned Advocate for the Applicant submitted that, the relationship between victim and accused was apparently consensual. Prosecution has not proved the age of victim. Birth certificate was produced by the mother of victim. The Investigating Officer is silent about the source of birth certificate. No witness from the school where the victim was studying has been examined by prosecution. The medical evidence shows that the victim was subjected to sexual relationship prior to the alleged incident. The victim has improved her version. Her evidence does not inspire confidence.

6. Learned APP and learned Advocate for Respondent No.2 submitted that, victim was minor girl at the time of incident. The said fact is apparent from the birth certificate adduced in evidence by the prosecution. Victim has categorically deposed that she was subjected to sexual intercourse by the accused. There is reason to disbelieve the victim.

7. The victim has alleged that, the incident has taken place on 20th November 2016. According to her, she was not acquainted with the accused prior to the said incident. Her evidence discloses that she had accompanied the accused to the place of incident. The Medical Officer has deposed that, the victim has history of physical relationship. In the past the victim had physical relationship, which is apparently prior to 20th November 2016. The prosecution has produced the birth certificate through the evidence of mother of the victim. The Investigating Officer however has not stated as to from where he has collected the said certificate. Since, the Appeal is pending it is not possible to give any finding on this issue but prima facie considering the nature of evidence and fact that the applicant was on bail during the trial, the sentence of imprisonment can be suspended.

ORDER

- (i) Interim Application No.1078 of 2023 is allowed.
- (ii) The substantive sentence imposed vide judgment and order dated 11th July 2022 passed by learned Additional Sessions Judge, Pune in Special Case Child Prot. No.74 of 2017 is suspended and the applicant is directed to be released on bail on executing PR bond in the sum of Rs.20,000/- with one or more sureties in the like amount.
- (iii) The applicant shall report concerned police station once in six

months on first Saturday of the month between 11.00 am to 01.00 p.m. till further orders.

(iv) Interim Application stands disposed off.

(PRAKASH D. NAIK, J.)