

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

**INTERIM APPLICATION NO. 1436 OF 2023
IN
CRIMINAL APPEAL NO. 457 OF 2023**

Manoj Kamla Chouhan ...Applicant/Appellant
Versus
The State of Maharashtra & Anr. ...Respondents

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Mr. V. S. Tiwari, Advocate for the Applicant/Appellant.

Ms. Mallika Sharma, Advocate for Respondent No.2.

Ms. Pallavi N. Dabholkar, APP for the Respondent No.1 – State.

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CORAM : PRAKASH D. NAIK, J.
DATE : 16th JUNE, 2023.

PER COURT :

1. The applicant is seeking suspension of sentence and grant of bail during the pendency of appeal challenging the Judgment of conviction.
2. The applicant is convicted for the offences punishable under Sections 376(2)(n), 506(2) of Indian Penal Code (for short “IPC”) and sentenced to suffer imprisonment of ten years and two years on each count.
3. The case of the prosecution is that the minor victim was subjected to sexual assault by the applicant which had resulted in pregnancy. The alleged incident had occurred somewhere in March-2017 and the FIR was lodged on 09.07.2017.

4. Learned Advocate for the applicant submitted that, there is delay in lodging the First Information Report. The evidence suffers from serious discrepancies. The D.N.A. Report suffers from doubt. The applicant is in custody for a period of about six years. The fact that the victim was silent for substantial period of time and that she along with her family attended the marriage of the applicant would suggest that the relationship between the accused and the victim was consensual. The applicant has been acquitted for the offences under the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act').

5. Learned A.P.P. and learned Advocate for Respondent No.2 submitted that there is no evidence to indicate that the relationship was consensual. The D.N.A. Report indicates that the applicant is the biological father of the foetus. The evidence of the victim could not be shaken. The prosecution has proved that the accused has subjected the victim to sexual assault. Although there is acquittal under the provisions of the POCSO Act, the applicant has been convicted for the offence under Section 376 of IPC.

6. As stated above, the trial Court has acquitted the applicant for the offences under the POCSO Act. The findings of the trial Court indicate that the prosecution was not able to prove the age of the victim girl. The FIR was not lodged immediately after the

incident. The cross examination of the victim discloses that, even after the alleged incident, she had attended the marriage of the applicant and stayed in his house along with her family for a period of about one month. The applicant is in jail for period of about six years. Considering the nature of evidence and the fact that the applicant is in jail for a period of six years, case for suspension of sentence and grant of bail is made out.

ORDER

- i. Interim Application No. 1436 of 2023 is allowed;
- ii. The substantive sentence of imprisonment imposed vide Judgment and order dated 21.02.2023 passed by the learned Special Judge under POCSO Act, 2012, Gr. Bombay in POCSO Case No.428 of 2017 is suspended and the applicant is directed to be released on bail on executing PR. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- iii. The applicant shall report the concerned Police Station once in six months on first Saturday of the month between 11.00 a.m. to 1.00 noon till final disposal of the appeal;
- iv. Interim Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)