

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.2439 OF 2022
IN
CRIMINAL APPEAL NO.737 OF 2022

Nitin Arjun Jadhav

.. Applicant

Versus

The State of Maharashtra & Anr.

.. Respondents

...

Mr.Mohansinh Rajput for the Applicant.

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

Mr.Yashodeep Deshmukh with Ms.Vaidehi Pradeep for the Respondent No.2.

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CORAM: BHARATI DANGRE, J.

DATED : 13th MARCH, 2023

P.C:-

1. The present application is taken out by the Appellant/Applicant, seeking suspension of sentence and his release on bail, during the pendency of the Appeal instituted by him, wherein he has called in question the Judgment delivered by the learned Special Judge, Satara in POCSO Special (Child) Case No.54 of 2018 on 05/07/2022.

By the said Judgment, the Applicant is convicted for the offences punishable under Sections 5(1) and 6 of the POCSO Act, 2012 and sentenced to suffer R.I. for 10 years with fine of Rs.5,000/-, in default to suffer S.I. for 3 months.

As far as the charge under Sections 363, 366 and 376(2)(i)(n) of the IPC is concerned, there is no clear-cut finding of his acquittal, but the learned Special Judge has recorded that the punishment under Section 6 of the POCSO Act, 2012 is more effective in nature and, hence, there is no sentence imposed.

The legality and propriety of such an observation in the impugned Judgment, though not specifically challenged by the prosecution, deserve a consideration at the time when the Appeal will be heard.

2. The Appellant face a charge of removing a minor girl, aged 15 years, from lawful guardianship, on a promise of marriage. On removing the girl from the lawful custody, her custody was retained by him from 30/03/2018 to 28/04/2018 and he is charged of repeatedly committing rape on the girl, thereby attracting Section 376(2)(i)(n) of IPC.

3. On being charged for the aforesaid offence, the victim girl herself has stepped into the witness box and she categorically deposed that she became acquainted with the Appellant, as he used to come on cite for work of a house of her cousin uncle, which was being undertaken in front of her house. She categorically deposed that the acquaintance turned into a love affair and the Appellant gave her a new mobile with SIM card on which, they used to establish contact with each other. He assured that he will marry her.

As per the victim herself, she accompanied the Appellant, when he assured that he will marry her. She was taken to his village and made to stay there from 30/03/2018 to 28/04/2018, when she was taken to temple, probably for the purpose of solemnization of marriage, but was required to go to Lonand police station, as her family members lodged a complaint.

4. Admittedly, the victim girl is minor, but it can be seen that from 30/03/2018 to 28/04/2018, till she was brought to the police station, she continued to reside with the Appellant and his family and she narrated to the Medical Officer, during her medical examination, that on the particular date, since the quarrel was ensued in the house by her grand-mother, she left with the Appellant and continued to reside with him alongwith his parents for a period of one month and during the said period, they had sexual relations for seven to eight times. She also categorically disclosed to the Medical Officer that it was not forcible. The last date on which they established sexual relationship was 26/04/2018.

The above aspect is deposed by the Medical Officer i.e. P.W.4 and she categorically corroborated the fact that the victim was subjected to sexual intercourse. She deposed that there was no fresh injuries, but opined that the possibility of rape cannot be ruled out. Undisputedly, the victim girl was 14 years and 7 months on the date when the incident took place and is a minor.

5. The learned Special Judge has recorded that she being a minor, her consent was immaterial. This aspect definitely warrants consideration as the consent of a girl below 18 years, will assume no significance as far as the offence under the POCSO Act is concerned. However, the fact that she continued to reside with the Appellant for a period of almost one month and she never made an attempt to escape herself from the house of the Appellant or lodge a complaint, are the important circumstances, which must be appreciated, in the wake of the decision in the case of *S. Varadarajan Vs. State of Madras*¹.

6. Considering the finding recorded in the impugned Judgment and the fact that the Appellant at the relevant time was aged 26 years and now informed to be married and so is the victim, I deem it appropriate to suspend the sentence and release the Appellant on bail. Hence, the following order.

: ORDER :

1. The interim application is allowed.
2. The conviction of the Appellant in Special (Child) Case No.54 of 2018 is hereby suspended.
2. The Appellant be released on bail and he shall abide by the same terms and conditions imposed on him, while he was released on bail, subject to furnishing a fresh bail bond within a period of four (4) weeks from today.

(SMT. BHARATI DANGRE, J.)

¹ (1965) 1 SCR 243