

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

**INTERIM APPLICATION NO.3311 OF 2022
IN
CRIMINAL APPEAL NO.744 OF 2022**

Sagar Satish SonawaneApplicant
Versus
The State of Maharashtra & Anr. Respondents

Mr. Vikas Shivarkar, Advocate for the Applicant.
Smt. M.R. Tidke, APP for the Respondent No.1-State.
Mr. Drupad S.Patil, Advocate (appointed) for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 9th FEBRUARY, 2023

P.C. :

1. This is an application for bail during pendency of the appeal preferred by the applicant. The applicant was convicted and sentenced by the Additional Sessions Judge, Pune vide his judgment and order dated 6.6.2022 passed in Special POCSO Case No.420/2019. The applicant was convicted for commission of the offence punishable under Section 376(3), 376 (2)(j)(n) of IPC and under Section 3 read with Sections 4, 5(l)(j)(ii) punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short, the 'POCSO Act'). He was

sentenced to suffer RI for twenty years to pay fine of Rs.25,000/- and in default to suffer RI for two years. The applicant was also convicted for commission of offence punishable under Section 363 of IPC and was sentenced to suffer RI for two years and to pay fine of Rs.5,000/- and in default to suffer RI for three months. Both the sentences were directed to run concurrently. He was given benefit of set off.

2. Heard Shri Vikas Shivarkar, learned counsel for the applicant, Smt. M.R. Tidke, learned APP for the respondent No.1-State and Shri Drupad Patil, learned appointed counsel for the respondent No.2.

3. Learned counsel for the applicant states that it was a clear case of consent. Out of their love affair, they had established physical relations resulting in her pregnancy and she delivered a male child, who is at present with the victim. He submitted that the sentence imposed on the applicant is erroneous because it is based on the wrong assumption that minimum sentence was twenty years. Learned Judge has overlooked the fact that the amendment was made effective

from August, 2019 and the incident had allegedly taken place much prior to that. Learned Judge himself has observed that leniency is required to be shown to the applicant and yet the sentence which was double the minimum sentence which was provided at that point of time was imposed.

4. He submitted that the applicant is already in custody for more than three years. At that time, the minimum sentence provided was for ten years. By taking sympathetic view even otherwise the sentence is required to be reduced. He has spent considerable period in custody. He submitted that the date of birth of the victim is in serious doubt as the documents regarding her birth are not proved beyond reasonable doubt.

5. Learned APP as well as learned counsel for the respondent No.2 submitted that the offence is proved. They submitted that there was no reason to dispute her date of birth. However, both of them fairly conceded that at the time of incident, the minimum sentence provided was for ten years and not for twenty years. They also conceded that the applicant has undergone more than three years of actual jail sentence.

6. I have considered these submissions. I have also perused the impugned judgment and order and the evidence annexed to this appeal. The victim is examined as PW-1. She has deposed that her date of birth was 18.8.2005. She has narrated that she got acquainted with the applicant. They had developed friendship since 2015. Then they were regularly meeting and used to talk on telephone. The applicant had even proposed to her. PW-1 continued meeting him and her evidence shows that they had developed a love affair. She has deposed that the applicant established physical relations with her in the month of January 2019, April 2019 and this happened five to six times. With the result, she got pregnant. In July, 2019 she suspected that she was pregnant and, therefore, she informed the applicant. The applicant met her and took her to his maternal aunt. He kept her there for one day. The mother of PW-1 called the applicant on his mobile phone and asked about PW-1. Then she called both of them to police chowki. They then went to Wanwadi police station. After that the FIR was registered. On 5.7.2019 she was taken to Sassoon Hospital. At that time, her pregnancy was confirmed. Her statement was

recorded under Section 164 of Cr.P.C. She gave birth to a male child. Thus, from her evidence it is quite clear that it was a consensual physical relationship.

7. Therefore, the crucial question would be whether she was below 18 years of age at the time of incident. The learned Judge has discussed this issue in paragraph-14 of the impugned judgment. The contention of the defence was that the medical papers filed by the doctor showed that her age was nineteen years. The Court took into consideration Exhibit-14 which was a medical certificate in which the date of birth of the victim was mentioned as 18.8.2005. She was born in Sassoon Hospital, Pune. There was an entry taken by the Municipal Corporation, Pune on the basis of the information sent by Sassoon Hospital. All these entries will have to be examined during final hearing stage of the appeal. Since the appeal is admitted, all these questions are still open to be argued by the defence.

8. Besides this, the learned Judge has observed in paragraph-24 that it was a consensual sexual intercourse and,

therefore, the applicant could not be punished severely. Learned Judge has further observed that the applicant and the victim were in love with each other and it resulted in her pregnancy. Learned Judge has specifically observed that this was a fit case to show leniency to the applicant. Thus, at this stage when the appeal is still pending before the Court, the same approach can be adopted and leniency can be shown to the applicant for consideration of bail in the background of the case and evidence. Therefore, I am inclined to grant bail to the applicant during pendency of the appeal.

:: O R D E R ::

- i. During pendency and final disposal of Criminal Appeal No.744/2022, the applicant is directed to be released on bail on his furnishing PR. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- ii. Interim Application is disposed of accordingly.

(SARANG V. KOTWAL, J.)

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