

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

**INTERIM APPLICATION NO. 3559 OF 2022  
IN  
CRIMINAL APPEAL NO. 1096 OF 2022**

Pradeep Dharma Deokule ..Applicant  
Versus  
The State of Maharashtra & Anr. ..Respondents

Mr. Shailesh Kharat for Applicant.  
Smt. M. R. Tidke, APP for State/Respondent No.1.  
Mr. Nagesh S. Khedkar for Respondent No.2.

**CORAM : SARANG V. KOTWAL, J.  
DATE : 14 FEBRUARY 2023**

**PC :**

1. The applicant was convicted and sentenced by learned Special Sessions Judge, Pune (under POCSO Act) vide his Judgment and order dated 26/05/2022 passed in Sessions Case No.381 of 2015. The Applicant was convicted for commission of offences punishable under sections 376(f) and 376(j) of the I.P.C. and under sections 4 and 6 of the Protection of Children from Sexual Offences Act (hereinafter referred to as 'POCSO Act'). The applicant was sentenced to suffer R.I. for 20 years and to pay a fine of Rs.20000/- and in default of payment of fine to suffer R.I.

for one year.

2. Heard Shri. Shailesh Kharat, learned counsel for the Applicant, Smt. Tidke, learned APP for the State/Respondent No.1 and Shri. Nagesh Khedkar, learned counsel for the Respondent No.2.

3. The prosecution case is that the applicant was cousin of the victim. He was victim's paternal aunt's son. According to the prosecution case, about four months prior to August 2015 the applicant took the victim to a secluded spot and committed rape on her resulting in her pregnancy. When her pregnancy was detected, the F.I.R. was lodged on 22/08/2015 at Loni Kalbhor police station and it was transferred to Wanawadi police station. The investigation was carried out. The applicant was arrested. The pregnancy of the victim was terminated but the D.N.A. samples were collected in respect of the fetus of the victim, the victim herself and the applicant. The D.N.A. profile testing was carried out. The report was that the victim and the applicant were the biological parents of the fetus. On this basis the applicant faced the

trial.

4. The prosecution examined seven witnesses including the victim, the Medical Officers and the police officers.

5. Learned counsel for the applicant submitted that, it was a clear case of consent. The victim has not supported the prosecution case. She was declared hostile. The prosecution has not proved the contradictory statement recorded by the Magistrate under section 164 of the Cr.p.c. The victim never wanted to prosecute the applicant. The applicant was on bail during trial. The sentence awarded is unnecessarily harsh. Learned Trial Judge overlooked that minimum sentence at that point of time was 10 years and not 20 years which is imposed on him.

6. Shri. Nagesh Khedkar, Learned counsel for the Respondent No.2 specifically submitted that the Respondent No.2 has no objection for granting bail to the applicant pending his appeal. Learned APP left the matter to be decided to the discretion of this Court, in view of the fact that the victim has not supported the prosecution case.

7. I have considered these submissions and I have perused the evidence which is annexed to the appeal memo. The victim was examined as PW-1. She has denied the entire allegations against the applicant. She has not supported her own F.I.R. and she has not supported her statement recorded U/s.164 of the Cr.p.c. Before the trial court she had not made any grievance against the applicant.

8. PW-2 Dr. Dipali Jadhav was examined on the point of victim's pregnancy. This fact is hardly in dispute.

9. PW-3 A.P.I. Rani Kale had produced the admission card of 10<sup>th</sup> Standard of the victim on which her date of birth was mentioned as 16/12/1997. However, the source of this information and the basis of preparation of this card is not produced on record. Therefore, this is an important lacuna in the prosecution case. PW-3 has further deposed about the investigation carried out by her.

10. PW-4 P. I. Suvarna Hulwar had registered the F.I.R. She proved the contrary portions from the F.I.R. which are exhibited at

Exhibit 76 and 77.

11. PW-5 Dr. Naresh Zanjad had conducted the radiological examination. According to his report, on 26/08/2015 the victim's age was between 17 years and 19 years.

12. PW-6 Police Naik Santosh Lawte had carried the D.N.A. samples to the Forensic Science Laboratory.

13. PW-7 Rohan Shinde was working with the Forensic Science Laboratory and he had produced the D.N.A. report.

14. Thus, from the evidence it is clear that there was physical relation between the victim and the applicant resulting in her pregnancy. At this stage, it cannot be denied that the applicant had caused her pregnancy, however, the question would be whether it was a consensual affair or not. The victim and the applicant were knowing each other, therefore, she was also aware of his marital status. The most significant factor for consideration of this bail application is that the victim had not supported the prosecution case at the time of trial. She had denied all the allegations. There is clear effort on her part to help the applicant.

Even learned counsel for the Respondent No.2 has given no objection for grant of bail to the applicant.

15. Another important factor to be considered is about the age of the victim. The documentary proof, as mentioned earlier, is not satisfactory and it does not prove her age beyond reasonable doubt. The radiological examination shows that her age at that relevant time was between 17 years to 19 years. Therefore, there is reasonable possibility that the victim could be above 18 years of age at the time of incident. Therefore, at this stage, there is reasonable material to show that, it was a consensual affair and there is reasonable possibility that the victim was above 18 years of age. Considering both these factors, the contention of learned counsel for the applicant that, it may not amount to any offence as defined U/s.375 of the I.P.C. or U/s.6 of the POCSO Act, will have to be accepted at this stage. The applicant was on bail during trial and there are no allegations of misusing that liberty. This is an additional factor in his favour for consideration of bail pending his appeal. Taking into account all these factors, the applicant can be granted bail during pendency of his appeal.

16. Hence, the following order:

O R D E R

- i) During pendency and final disposal of Criminal Appeal No.1096 of 2022, the Applicant is directed to be released on bail on his furnishing P. R. bond in the sum of Rs.30000/- with one or two sureties in the like amount.
- ii) The Application is disposed of.

**(SARANG V. KOTWAL, J.)**