

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.3928 OF 2022
IN
CRIMINAL APPEAL NO.1283 OF 2022

Vilas Pundalik Chaudhari .. Applicant

Versus

The State of Maharashtra & Anr. .. Respondents

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Mr.Chetan Deshmukh for the Applicant.

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

Mr.Gaurav Parkar, Appointed Advocate, for the Respondent No.2.

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CORAM: BHARATI DANGRE, J.

DATED : 17th APRIL, 2023

P.C:-

1. By the present application, the Applicant, who has filed an Appeal against the Judgment and Order dated 24/08/2022, passed by the Special Judge, Nashik in Special Case (POCSO) No.131 of 2020, seek his release on bail, pending the adjudication of the Appeal.

2. Heard the learned counsel for the Applicant, learned counsel for Respondent No.2 and the learned A.P.P., who represent the State.

By the impugned judgment, the present Applicant, who is arraigned as Accused No.2, is convicted for committing an

offence punishable under Section 363 read with Section 34 of IPC and also under Section 366-A of IPC. It is Accused No.1, who is convicted for committing the offence punishable under Section 376(3) of IPC and under Section 4 of the POCSO Act, as the victim girl was a child, when the act was committed.

On being convicted under Sections 363 and 366-A of IPC, the Applicant is sentenced to suffer RI for five years and to pay fine of Rs.2,000/-, in default to suffer S.I. for a period of one month, both the sentences having been directed to run concurrently.

3. On perusal of the impugned judgment and the statement of the victim girl as well as of her father, the case of the prosecution appear to be, that the Applicant is a cousin of the victim, who on the date of incident, while some function was being celebrated in the village, asked her to accompany. The Applicant was accompanied with Accused No.1 and she was taken to a place, where they resided throughout the night and the prosecutrix alleged that it is Accused No.1-Harishchandra, who committed forcible intercourse with her. She accompanied him to a wine-yard, where she worked till she was rescued i.e. till 04/07/2020. According to the prosecutrix, Accused No.1-Harishchandra assured her that he would solemnise marriage with her and also threatened her that she shall not disclose the incident to any one.

In the cross-examination, she specifically admit that she had not disclosed the incident to any one, as she was scared. The present Applicant was kept in dark and his wife, who had

joined them at a subsequent point, was also not told about the said incident.

4. The learned counsel would submit that the ingredients of Section 366-A, which provides punishment for procurement of a minor girl, necessarily contemplate an intention that such a girl is likely to be forced or seduced to illicit intercourse with another person.

5. By inviting my attention to the admission in the cross-examination of the victim girl (PW 1) to the effect that she had not disclosed the incident to anyone and the history of the incident is narrated to PW 7, to whom it was disclosed that Accused is acquainted to her since last five months and there were physical relations between them, he would submit that, prima facie, charge under Section 366-A could not have been said to be proved, which would deserve conviction and imposition of sentence.

In any case, evidence will be appreciated at the time of hearing of the Appeal. However, considering a limited role attributed to the present Applicant, I deem it appropriate to allow the application. Hence, the following order.

: ORDER :

1. Interim Application No.3928 of 2022 is allowed.
2. The sentence imposed on the Applicant vide Judgment and Order dated 24/08/2022 in Special Case (POCSO) No.131 of 2020 is suspended.

3. Applicant- Vilas Pundalik Chaudhari shall be released on bail, on furnishing P.R.Bond to the extent of Rs.25,000/-, with one or more sureties in the like amount.

(SMT. BHARATI DANGRE, J.)