

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

**INTERIM APPLICATION NO.4377 OF 2022
IN
CRIMINAL APPEAL (ST) NO.21517 OF 2022**

Deepak Sahebrao Nazarkar Applicant

versus

State of Maharashtra & Anr. Respondents

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- Mr. G. S. Jadhav i/b. Mr. B. A. Aloor, Advocate for Applicant.
- Mr. S. R. Agarkar, APP for the State/Respondent No.1.

**CORAM : SARANG V. KOTWAL, J.
DATE : 18th JANUARY, 2023**

P.C. :

1. This is an application for bail pending final disposal of the Applicant's Appeal.

2. Heard Mr. G. S. Jadhav i/b. Mr. B. A. Aloor, learned counsel for the Applicant and Mr. S. R. Agarkar, learned APP for the State.

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3. The Applicant was convicted and sentenced by the Special Judge under POCSO, vide his Judgment and Order dated 13/06/2022 in Special POCSO S.C. No.5/2017. The Applicant was convicted for commission of offence punishable u/s 6 r/w 5 (j)(ii)(l) of the Protection of Children from Sexual Offences Act, 2012 and u/s 376(2)(n), 506 of the Indian Penal Code. The major sentence imposed on him was rigorous imprisonment for 15 years besides imposition of fine. The fine amount was directed to be paid to the victim as compensation.
4. Learned counsel submitted that the age of the victim is not proved beyond reasonable doubt. There are indications that it was a consensual love affair and therefore the Applicant deserves to be acquitted and on this ground he also deserves to be granted bail pending final disposal of his Appeal.
5. Learned APP opposed these submissions. He submitted that the age of the victim is proved through the birth certificate

as well as through ossification test. The victim has not accepted the consensual relationship.

6. I have considered these submissions. The statement u/s 313 of Cr.P.C. of the Appellant mentions that there was a love affair between him and the victim and they were to get married. The Applicant quarreled with the victim's mother. He was asking the dues of the rent of the room where the victim's family was residing. He was asking that rent at the behest of the owner. Because of this reason the victim's family got angry and implicated him in the false offence. The evidence of the victim, however, shows that her date of birth was 21/08/2002. The incident took place in April 2016. Therefore, at that time she was below 14 years of age. In her deposition she has clearly stated that the Applicant had committed forcible intercourse and there was no consent.

7. Therefore, at this stage, there is sufficiently strong material against the Applicant and therefore he cannot be

granted bail. The Bail Application is rejected. However, considering the submission made by learned counsel for Applicant, the hearing of the Appeal is expedited. The Applicant is at liberty to file an application for fixing early date of hearing.

8. With these observations, the application is disposed of.

(SARANG V. KOTWAL, J.)