



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (APPA) NO. 19 OF 2024

IN

CRIMINAL APPEAL NO. 597 OF 2023

Rohit S/o. Arjun Uike and another

Vs.

State of Maharashtra and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri P K. Bezalwar, Advocate for applicants.

Ms. Kavita Bhondge, APP for non-applicant no. 1/State.

Shri S. S. Rotkar, Advocate for non-applicant no. 2.

CORAM :- M. W. CHANDWANI, J.

DATED :- 09.02.2024

Heard.

2. By the present application, the applicants are seeking suspension of the substantive sentence passed on 17.06.2023 by the learned Special Judge, Nagpur in Spl. Case Child Prot. No. 655/2020.

3. The learned Special Judge, by the impugned judgment and order, passed the following sentence:-

“i) The accused no.1 Rohit Arjun Uike and accused no.2 Bunty Vijay Naitam is hereby convicted under Section 235(2) of Cr.PC. for the offence punishable under section 363 of IPC and sentenced to suffer rigorous imprisonment for five years and to pay the fine of Rs. 1,000/-(Rupees one thousand only) each in default to suffer imprisonment of one month.

ii) The accused no.1 Rohit Arjun Uike is hereby convicted under section 235(2) of Cr.PC. for the offence punishable under

section 506 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for two years.

iii) The accused no.1 Rohit Arjun Uike is hereby convicted under section 235(2) of Cr.PC. for the offence punishable under section 6 of POCSO Act and sentenced to suffer rigorous imprisonment for twenty years and to pay fine of Rs. 3,000/- (Rupees three thousand only) in default to suffer imprisonment of three months. If the accused no.1 paid the fine amount it should be given to the victim.

iv) The accused no.1 Rohit Arjun Uike is also hereby convicted u/s. 235(2) of Cr.PC. for the offence punishable under section 376(2)(n) of IPC, since the charges against the accused no.1 has proved under section 4 of POCSO Act. Hence, accused no.1 is convicted under section 4 of the POCSO Act and therefore, alternate punishment cannot be imposed on the accused no.1.

v) The accused no.1 Rohit Arjun Uike is hereby acquitted under Section 235 of Cr.PC. for the offence punishable under section 366A of the Indian Penal Code.

vi) The accused no.2 Buntty Vijay Naitam is hereby acquitted under Section 235 of Cr.PC. for the offences punishable under Section 366A. 506 of the Indian Penal Code

vii) All the sentences shall run concurrently.”

* * *

4. It is the contention of the learned counsel for the applicants that there were love affair between the applicant no. 1 and the victim-girl. According to him, she all the way accompanied with the applicants to Bhopal without any resistance. The victim-girl is aged about more than 16 years. The birth certificate has not been properly proved as per the law. He submits that the applicant no. 1 has been wrongly convicted for the offence punishable under Section 6 of the POCSO Act. The punishment is for a fixed term hence, seeks suspension of sentence.

5. *Per contra*, the learned APP for the State vehemently objected the application on the ground that the victim-girl has not consented for the sexual intercourse. According to her, even if for the sake of argument it is presumed that she was a consenting party but, her consent is immaterial being a minor. To buttress her submission, she seeks to rely on the case of ***Eera Vs. State (NCT of Delhi) [(2017) 15 SCC 133]***, wherein it has been held that consent of a minor is immaterial.

6. With the able assistance of the learned counsel for the applicants as well as the learned APP for the State, I have gone through the impugned judgment as well as the evidence of the victim-girl.

7. As per the case of the prosecution itself, the victim-girl is more than 16 years of age and she was able to understand the consequences. In the wake of the judgment in the case of ***S. Varadarajan Vs. State Of Madras [1965 AIR 942]***. A arguable case is made out whether conviction under Section 363 of the IPC is maintainable. Further it appears from the record, including the deposition of the victim-girl, that she is more than 16 years of age. The evidence on record also shows that sexual intercourse occurred once. In that scenario, whether the case is covered under Section 6 of the POCSO Act, for which the applicant no. 1 is sentenced to suffer rigorous imprisonment for twenty

years, is a question, which can be considered at the time of final hearing after scrutinizing the material on record.

8. Considering these peculiar facts, a case is made out for suspension of the sentence pending the appeal. Hence, the following order:-

- i) The application is allowed.
- ii) Pending the appeal, the substantive sentence passed on 17.06.2023 by the learned Special Judge, Nagpur in Spl. Case Child Prot. No. 655/2020 against the applicants shall remain suspended.
- iii) The applicants shall released on bail, on they executing a P.R. bond of ₹25,000/- (Twenty Five Thousand) each with one solvent surety in the like amount.
- iv) The applicants shall deposit the fine amount in the Trial Court within one week from today.
- v) The applicants shall not contact the victim-girl in any manner during the pendency of the appeal.
- vi) The applicants shall remain present before this Court at the time of hearing of the appeal.
- vii) Hamdast is granted.

The Registry is directed to process the appeal as per the rule.

(M. W. CHANDWANI, J.)