



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 844 OF 2022
IN APEAL/181/2022

Shaikh Jamil @ Rahil Khan
S/o Shaikh Abdul Shukkur
Age : 34 years, Occu. : Private Service,
R/o. In front of Ali Masjid, Ansar Colony,
Padegaon, Tq. & Dist. Aurangabad.

... Applicant
(Orig. Accused)

Versus

1. The State of Maharashtra

2. X.Y.Z.

... Respondents

...
Mr. P. N. Ghadge, Advocate for Applicant.
Mrs. Ashlesha Deshmukh, APP for Respondent - State.
Mr.R. M. Gaikwad h/f.Mr. M.M. Ambhore, Advocate for Respondent No.2.

...

CORAM : ABHAY S. WAGHWASE, J.

DATED : 3rd MAY, 2024

PER COURT :

1. By way of instant application, applicant is seeking suspension of sentence and grant of bail on account of his conviction recorded by learned Special Judge (POCSO), Aurangabad in Special Case (POCSO) No. 64 of 2016, dated 13.11.2021.

2. Learned counsel for applicant pointed out that,

applicant was charge-sheeted for commission of offence under sections 376(2)(i) of Indian Penal Code (IPC) and under section 3 read with section 4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). That, he faced trial before learned Additional Sessions Judge, Aurangabad, vide Special Caes (POCSO) No.64 of 2016 and he pointed out that finally on conclusions of trial, applicant was held guilty for offence punishable under section 376(2)(i) of IPC and under sections 3 read with section 4 of POCSO Act.

3. It is further pointed out that, exception has been taken to the said judgment by filing Criminal Appeal bearing No.181 of 2022. The same is pending. According to him, there is false implication. That, there was love relation between accused and complainant. That, there was solitary incident of physical contact, but it was consensual. He pointed out that, material witnesses are not examined, and therefore, there is a good case on merits in appeal. He pointed out that, already applicant is behind the bars since almost 8 years and hence, he prayed for suspension of sentence and grant of bail during pendency of appeal.

4. Strongly opposing the above application, learned APP as well as learned counsel for victim, both pointed out that, victim

is proved to be below 16 years of age i.e. she had completed barely 15 years of the age, and therefore, according to them, it is not open for accused to force plea of consent. It is pointed out that, accused had taken her and had committed sexual intercourse with her. Being minor provisions of POCSO Act were attracted and therefore only on due satisfaction and availability of evidence, guilt has been recorded. For offence being serious, they both prayed to refuse and reject the relief so prayed.

5. After hearing submissions of both sides and on going through the papers, it seems that, accused was charge-sheeted for commission of offence under sections 376(2)(i) of IPC and under section 3 read with section 4 of POCSO Act. Trial seems to have concluded on 13.11.2021 holding applicant guilty for all above charges.

6. Prosecution has established age of victim by adducing evidence of official of school at Exhs. 36, 37 and 38. Date of birth of victim is reported as 09.12.2000. Taking into consideration the date of occurrence, which is reflected in the complaint apparently victim below 16 years of age. Case of love affair and consent has been primarily put-forth, but in view of above age and she being a minor, such plea vanishes in thin air.

7. Taking the gravity of the offence into consideration and seriousness of the crime, though applicant is behind the bars since 8 years, he has been already sentenced to suffer imprisonment for 20 years. In the light of such material, relief so prayed cannot be granted.

8. Criminal Application stands rejected.

(ABHAY S. WAGHWASE, J.)