



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO. 1063 OF 2024
IN APPEAL/234/2024**

. Krishna Mahadev Gore
Age: 25 years, Occu.: Labour,
R/o. Nagtala, Taluka – Ashti, Dist.Beed,
At present – Behind Swami Samarth School,
Kusumba, Taluka @ District – Jalgaon. ..Applicant

Versus

1. The State of Maharashtra
Through it's Taluka P.S.Bhusawal,
Police Station, Tq.Bhusawal,
Dist.Jalgaon.

2. X.Y.Z. ..Respondent

...

Advocate for Applicant : Mr.Sagar S.Chitre h/f. Mr. Vijay B. Patil

APP for Respondent no.1 : Mr.K.K.Naik

Advocate for Respondent no.2 : Mr. Ujwal S. Patil (appointed)

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CORAM : ABHAY S. WAGHWASE, J.

DATE : 30 SEPTEMBER, 2024

ORDER :-

1. Suspension of sentence and grant of bail are prayers raised by virtue of present application, which is offshoot of judgment and order passed by Additional Sessions Judge, Bhusawal, Dist.Jalgaon in Special (POCSO) Case No.28 of 2022 dated 02-02-2024.
2. In support of relief, learned Counsel for the applicant submitted that there is no cogent and reliable evidence showing that

the victim was a “minor” as defined under the Protection of Children from Sexual Offences Act (POCSO Act). He submitted that, moreover there was love affair. That victim had spent around 5-6 months in the company of applicant. That there was no force. That there is serious doubt about victim to be a “minor”. That evidence, more particularly, cross-examination of victim, creates doubt about age of victim. Therefore, evidence of prosecution on age is not sufficient to hold victim below 18 years of age, but still conviction has been recorded. According to learned Counsel, there is a good case in appeal on merits. That except testimonies of victim and her mother, there is no other convincing evidence. For all above reasons, he prays for relief of suspension of sentence and grant of bail.

3. Above application is strongly opposed by both, learned APP as well as learned Counsel representing victim. They supported conviction by pointing out that victim proved to be a “minor” thereby attracting provisions of POCSO Act. It is pointed out that applicant has impregnated victim. That DNA report shows applicant to be the biological father. They both pointed out that victim being a “minor”, theory of love affair and sexual intercourse by consent does not come to rescue of applicant. For all above reasons, they pray to reject the application.

4. After considering the above submissions and after going through the record, it seems that in the evidence of PW1 informant i.e. mother of victim, date of birth of victim is shown to be 31-01-2005, whereas occurrence took place on 10-06-2021. Taking into consideration testimony of PW7 Pawar (Clerk, Nagar Parishad Bhusawal) at exh.67, *prima facie*, there is no reason to raise doubt that victim was not a “minor” on the date of incident. Moreover, scientific evidence in the form of PW14 Dhere (Assistant Chemical Analyzer) also confirms involvement of the accused.

It is brought to the notice of this Court by learned APP that there was suppression of fact about previous marriage.

5. Considering age of victim and scientific evidence, this Court does not find it a fit case to extend relief as prayed. Accordingly, I proceed to pass following order :

ORDER

(i) Criminal Application No.1063 of 2024 is rejected.

(ii) Fees of the learned Counsel appointed for respondent no.2 is to be paid through the High Court Legal Services Sub-Committee, Aurangabad, as per Rules.

(**ABHAY S. WAGHWASE**)
JUDGE