



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2002 OF 2023
IN
CRIMINAL APPEAL NO. 478 OF 2023

Lalu @ Sanju Bhisn Sonawane
Age : 24 years, Occu: Labour
R/o Shafepur, Pishor, Tq. Kannad,
Dist. Aurangabad.
(Applicant is in jail)

... Applicant
[Orig. Accused]

Versus

1] The State of Maharashtra,
Through Police Inspector,
Pishor Police Station,
Tq. Kannad, Dist. Aurangabad.

2] XYZ

... Respondents

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Mr. Sopan G. Bobade, Advocate for the Applicant.
Mr. Rajdeep D. Raut, APP for Respondent No.1-State.
Mr. Kiran P. Rathod, Advocate for Respondent No.2 [appointed]

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 31.07.2024

Pronounced on : 02.08.2024

ORDER :

1. In the instant application, there are prayers for suspension of sentence and grant of bail pending appeal, in which exception has been taken to the judgment and order dated 27.04.2023 passed by Special Judge (POCSO), Aurangabad.

2. Learned counsel for the applicant pointed out that in the trial court, prosecution could not cogently prove that victim was a minor. That, there was no trustworthy evidence to show that victim was minor or below 18 years of age. Investigating Officer has not been examined. Mere school leaving certificate is considered by learned trial court and as such, according to him, when the very crucial aspect of age is under shadow of doubt, conviction of applicant under the provisions of the Protection of Children from Sexual Offences Act, 2012 [POCSO Act] has been challenged by way of appeal.

3. He further pointed out that, from the testimony of victim it is evident that she was not forced upon. That, in cross, she has admitted that at the time of incident, she was around 18 years of age. That, such material has not been considered by learned trial court and rather, conviction has been recorded and applicant is sentenced to suffer imprisonment for 20 years. That, even prosecution could not substantiate offence of kidnapping. According to him, there are several lapses in the investigation, but the same are not considered by learned trial court. Therefore according to him, applicant has a good case in appeal and has every hope of succeeding in the same. That, during pendency of trial, applicant was on bail and there is no breach

of any condition. That, much more time would be required to hear the appeal. Hence, learned counsel for the applicant prays for above relief.

4. Learned APP as well as learned counsel for the victim, strongly opposed on the ground that age of victim has been proved. There is cogent, reliable evidence and headmistress had produced school record reflecting victim's date of birth. That, considering the same, victim was around 16 years of age and hence a minor. They further pointed out that victim has deposed and she has narrated the acts at the hands of the applicant. That, he had repeatedly committed the offence. Offence being serious, there is strong oppose to the relief of suspension of sentence as well as bail.

5. After considering the submissions of both sides and on going through the papers, it is emerging that present applicant faced trial vide Special Case (POCSO) No. 185 of 2020 conducted by learned Special Judge, Aurangabad. Papers show that prosecution rested its case on testimony of in all five witnesses. As regards the age is concerned, prosecution has placed on record admission extract of the girl while she took admission in 1st standard and her date of birth is shown to be 24.01.2005. The said document is proved by examining

PW3 Headmistress. FIR by father PW2 is of 26.03.2020 regarding the occurrence which had taken place on 25.03.2020. Therefore, going by the date of birth reflected in the first school record, on the date of occurrence, she was around 16 years of age only. Consequently, submission that age has not been cogently proved, *prima facie* has no substance and force.

6. Victim's evidence, which is at Exhibit 21, shows that when she had been to the field along with her siblings, applicant, who was their neighbour, caught hold of her, pressed her mouth and she alleges that she was taken towards a hill to a shed and there, she has alleged that, during the night he had sexual intercourse with her three to four times. Though, as pointed out that victim stated that they both slept, considering the age, theory of passive submission cannot be taken aid of by the applicant who is 30 years of age.

7. Testimony of victim regarding applicant having physical intimacy three/four times has not been rendered doubtful. Therefore apparently, here, offence is serious. Victim is shown to be minor and therefore, mere failure to examine the Investigating Officer itself would not come to the rescue of the applicant for entitling him for the relief of suspension of sentence and bail. Considering the serious

nature of offence, it is not a fit case to grant relief as prayed. Hence, I proceed to pass the following order:

ORDER

- I. The application is dismissed.
- II. Fees of the counsel appointed for respondent no.2 be paid by the High Court Legal Services Sub-Committee, Aurangabad as per Rules.

[ABHAY S. WAGHWASE, J.]

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