



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

**CRIMINAL APPLICATION NO. 3067 OF 2024
IN APPEAL/838/2024**

. Balaji Mahadu Santre
Age: 23 years, Occu. : Labour,
R/o. Babhali, Tal.Dharmabad,
Dist.Nanded. ..Applicant

Versus

1. The State of Maharashtra
Through the Police Station, Dharmabad,
Tal.Dharmabad, Dist.Nanded.
2. XYZ
(First Informant) ..Respondents

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Advocate for Applicant : Mr.Cedic Fevuench h/f. Mr. V.S.Dhotare

APP for Respondent no.1 : Mr.N.B.Patil

Advocate for Respondent no.2 : Mr. Amolkumar Samadhan Wakode

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 10 OCTOBER, 2024

PRONOUNCED ON : 14 OCTOBER, 2024

ORDER :-

1. Present application is for suspension of sentence awarded by Special Judge (POCSO), Biloli, in Special Case No.16 of 2022 dated 01-03-2024 alongwith prayers for grant of bail during pendency of appeal.
2. Learned Counsel for the applicant submitted that applicant

was booked and tried for offence under Sections 376(2)(i), 376(2)(n) of the Indian Penal Code (IPC) and Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act (POCSO Act) as well as under Section 9 and 10 of the Prohibition of Child Marriage Act. Learned Counsel submitted that at the first count, here prosecution has not proved exact age of the victim. That mother of the victim, in her testimony, admitted that her daughter was major. That there is no concrete evidence in the form of date of birth certificate. That even there is no school record of the first school where victim allegedly studied. He pointed out that applicant has denied victim to be a minor while answering question under Section 313 of the Code of Criminal Procedure. Consequently, it is his submission that victim is not proved to be a minor. He pointed out that learned trial Judge has already acquitted applicant from charge and offence of under Sections 9 and 10 of the Prohibition of Child Marriage Act.

3. He next submitted that there was cohabitation for almost three months. That though case of prosecution is that marriage

was performed, there is no distinct evidence in that regard. That FIR is also at belated stage. That there are several infirmities in appreciation and there is no convincing evidence about forcible sexual intercourse. He submitted that composite questions are put to accused in Statement under Section 313 of the Code of Criminal Procedure (the Cr.P.C.), which is against spirit and settled law. That applicant has a good case on merits in appeal and has every hope of success in the same. However, according to him, as appeal is of 2024 and it would take sufficient time to be heard and decided, he prays for both above reliefs.

4. Both learned APP as well as learned Counsel for victim strongly opposed by submitting that there is cogent, reliable, convincing evidence that victim is a minor and around 14 years of age. Learned APP pointed out that mother of victim gave false evidence admitting victim daughter to be major because she was party to the performance of child marriage. It is submitted that there is penetrative sexual assault. That medical evidence suggested sexual intercourse. That there is correct

appreciation of evidence and accordingly guilt is recorded. They both submitted that offence being serious, relief as prayed may not be granted.

5. After hearing both sides, perused the depositions, statement of accused under Section 313 of the Cr.P.C. and operative part of judgment of the trial Court. In trial Court, prosecution case was that victim of 13 years of age was married to appellant and as such it was case of child marriage. There was said to be cohabitation for almost three months. Papers show that victim approached Umri Police Station and lodged the report on the basis of which crime was registered for the aforesaid offence and after investigation, accused was chargesheeted and trial was conducted.

6. At this stage, though it is application for suspension of sentence and bail, much emphasis is laid on the age of victim. According to applicant, victim was not a minor and even her own mother admitted it. But learned APP pointed out that mother herself was behind the alleged marriage. In trial Court, to support age, prosecution seems to have examined PW4

Baburao Yadavrao Pavitre, Head Master of Nutan Vidyalaya, Umri and he placed on record extract of admission register showing date of birth of victim as 19-04-2009. This witness has admitted that original papers of the previous school from where victim studied earlier i.e. Z.P. School was not called to ascertain date of birth. Dr.Nishat Khan, medical expert's evidence, who deposed in the capacity of PW2, has noted the history of her marriage being performed to the near relative, but stated that without her consent there was sexual intercourse and noticing about tear to the hymen. Report is also at the instance of victim herself. Issue of age cannot be gone into at this stage. Going by the papers placed before this Court, on full-fledge trial, guilt is recorded and case of prosecution is accepted. Considering the magnanimity of the crime, this Court does not find it a fit case to extend benefit of suspension of sentence of grant of bail. Accordingly, I proceed to pass following order :

ORDER

Criminal Application No.3067 of 2024 is rejected.

(ABHAY S. WAGHWASE)
JUDGE