



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3236 OF 2023

IN

CRIMINAL APPEAL 289 OF 2024

Salman Sherkhan Pathan,
Age: 21 yrs., Occu: Labour,
R/o. Jai Bhavani Nagar, Andhaner,
Tq. Kannad, Dist. Aurangabad.

... Applicant

versus

1. The State of Maharashtra

2. X. Y. Z.

... Respondents

.....

Mr. Satej S. Jadhav, Advocate for the Applicant.

Mr. S. K. Shirse, APP for Respondent No.1-State.

Ms. Shilpa Awchar, Advocate for Respondent No.2 (appointed)

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 03.09.2024

Pronounced on : 05.09.2024

ORDER :

1. By invoking Section 389 of Cr.P.C., Applicant is seeking suspension of sentence and grant of bail by virtue of conviction rendered by Special Judge (POCSO), Aurangabad in Special Case (POCSO) No. 142 of 2017 dated 29.04.2023.

2. Learned counsel for the applicant pointed out that applicant is barely 21 years of age. Victim is about 17 years of age. Applicant was charge-sheeted for commission of offence under Sections 363, 366-A, 376 of IPC and under the provisions of the POCSO Act. That, he is

already acquitted from charge under Section 366-A of IPC. Learned counsel pointed out that at the first count, though victim is shown to be minor, here, prosecution had not proved her age by adducing any legally acceptable evidence. Mere, admission form is gathered by the Investigating Officer and it is got exhibited on his own testimony. There is no other proof of age of the girl. Moreover, there are allegations that applicant brought victim from Kannad to Aurangabad and they spent only one day and night together. There was no force or promise of marriage. That, girl traveled with applicant from Kannad to Aurangabad in a bus and further traveled in rickshaw without raising any alarm. There is no medical evidence or papers. Therefore, there is a good case in appeal. However, according to him, appeal being recent one, it would take long time to be heard and decided, and hence, above relief is pressed into service.

3. Both, learned APP for State as well as learned counsel representing victim, opposed on the ground that victim is minor. She was brought from Kannad, where she had been to attend classes, to Aurangabad by making her wear *burkha* to prevent her identity. It is pointed out that in her testimony, victim has categorically stated that there was forcible sexual intercourse. Therefore, as serious offence is proved to be committed, they both prayed to refuse relief as prayed.

4. Perused the papers and the deposition of victim which is relevant at this stage. It is emerging that she is resident of Andhari,, Taluka Sillod and was studying in 11th standard when alleged incident took place. She has deposed that she knew applicant. He met her at Kannad bus stand and she claims that he induced her for marriage and they both came in bus from Kannad to Aurangabad. She has alleged that from there they both went in a rickshaw to a building at Ranjangaon and there, in a room, she claims that he had forcible physical relation with her. Therefore, taking her such testimony into consideration, and the fact that she was studying in 11th standard at that point of time, the aspect whether there was legally acceptable proof of age or availability of medical findings cannot be gone into at this stage. Merely because applicant is 21 years of age, relief cannot be extended, more particularly, in view of version of the girl that he had forcible physical relation with her. Resultantly, no case is made out to either suspend the sentence or grant bail. Consequently, I proceed to pass the following order:

ORDER

The Application is rejected.

[ABHAY S. WAGHWASE, J.]