



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4023 OF 2024
IN
CRIMINAL APPEAL NO. 640 OF 2024

Anil Laxman Dhumal

..APPLICANT

VERSUS

State of Maharashtra

..RESPONDENT

....
Mr. N.S. Ghanekar, Advocate for applicant
Mr. S.J. Salgare, A.P.P. for respondent - State
....

CORAM : R.G. AVACHAT AND
NEERAJ P. DHOTE, JJ
DATE : 25th SEPTEMBER, 2024

PER COURT :

1. This is an application for suspension of sentence imposed by the Special Court (POCSO), Aurangabad in Special Case No. 32 of 2019 vide judgment and order dated 02nd July, 2024, thereby convicting the applicant for the offence punishable under Sections 376(2)(n) and 506 of the Indian Penal Code (I.P.C.).

2. The crime was registered on the report by the victim on 26th November, 2018. According to the victim, she was minor when the accused/convict had committed rape on her repeatedly.

3. It is submitted by learned counsel for the applicant that the report was lodged after she was pregnant of six months. The applicant is not named in the F.I.R. The conviction is based on the DNA report. He was on bail during the trial.

4. The application is opposed by learned A.P.P. He submits that the victim was minor at the time of sexual intercourse, and therefore, there is no question of consent. He submits that the report of DNA shows that the applicant was the biological father of the child. He submits that the offence of rape has been established against the applicant.

5. We have gone through the evidence on record. The prosecution has examined the victim as Witness No.2. Her evidence shows that she was the girl of understanding. Her evidence shows that she had gone to the house of the applicant as applicant called her. Admittedly, the applicant is not named in the F.I.R. The F.I.R. is against accused no.1, who was her maternal grandfather, aged 74 years. She further implicates Accused No.3, a juvenile, who was the son of her maternal uncle. The trial Court has observed that the age of the prosecutrix / victim is not proved. Admittedly, the applicant has been acquitted of the charge of Section 6 of POCSO Act. The F.I.R. was lodged after she was pregnant of six months. From the evidence on record, it can be inferred that the victim was in consensual relationship

with the applicant. There is nothing to show whether the State has preferred appeal against acquittal of the applicant of the offences punishable under Sections 376(3) of the I.P.C. and under Section 3(a) read with Sections 4, 5(j)(ii)(l), 6, 7, 8, 11 and 12 of the POCSO Act. The applicant was of nineteen years of age at the relevant time. The applicant was on bail during trial. There is no likelihood that the appeal would be heard in near future. In this view of the matter, we proceed to pass the following order :-

The execution of substantive sentence of imprisonment to stand suspended pending the appeal. The applicant be released on his executing P.R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

6. Criminal application stands disposed of accordingly.

(NEERAJ P. DHOTE, J.)

SSD

(R.G. AVACHAT, J.)