



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3597 OF 2023

IN

CRIMINAL APPEAL NO. 288 OF 2024

Rushikesh s/o Shashikant Chilghar

Age : 22 years, Occu: Education

R/o Kamgar Nagar,

Satpur M.I.D.C. Nasik,

At present Central Prison

Harsul, Aurangabad.

... Applicant

Versus

1. The State of Maharashtra
Through Police Station
Kranti Chouk, Aurangabad.

2. X Y Z

... Respondents

.....

Mr. Sunil B. Surse, Advocate for the Applicant.

Mr. K. K. Naik, APP for Respondent No.1-State.

Mr. S. M. Pandit, Advocate for Respondent No.2 (appointed)

.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 05.09.2024

Pronounced on : 10.09.2024

ORDER :

1. Vide instant application, applicant is praying for suspension of sentence and grant of bail by virtue of conviction recorded by learned Special Judge, Aurangabad in Special Case (POCSO) No. 251 of 2021 dated 16.06.2023. Learned counsel submitted that applicant was

barely 21 years of age at the time of incident. That, there was love affair between him and victim. They had performed marriage. There was no use of force in maintaining physical relations. That, whatever instances took place were consensual one. He further submits that, girl has deposed merely under pressure of parents. That, she had willingly joined applicant. That, applicant has a good case on merits in appeal, but as it would take long time to be heard, he prays for suspension of sentence and bail.

2. While opposing the above application and prayers, both, learned APP for State and learned counsel for respondent no.2, would submit that serious offence is committed. That, victim was minor. She was a school going girl. She was taken to various places like Nashik, Satpur. During two days stay, victim alleged that he had sexual intercourse with her. They both submitted that girl being minor, question of her consent does not arise. That, there is ample proof of age as well as medical evidence, and therefore, considering the nature of offence committed, they both prayed to dismiss the application.

3. Heard each of the sides and perused the papers. Victim apparently seems to be a minor and her date of birth given is 15.12.2005. She and applicant both appear to have eloped on

29.12.2020 and went to Nashik and came back. Again on 15.04.2021, they eloped and went to Satpur and from there to Kalva. Victim in her evidence at Exhibit 30 speaks of physical relations during their two days stay at Satpur and nine days stay at Kalva. Marriage was also alleged performed in a temple on 25.04.2021. Victim has reported consensual sexual intercourse to the Doctor, but apparently she was minor. In support of age of victim, prosecution has examined Headmaster of the school.

4. Therefore, apparently, offence under the provisions of the POSCO Act is established to be committed. Considering the nature of accusations and the charges proved, though applicant is also a young boy of 22 years, relief as prayed cannot be granted. Hence, I proceed to pass the following order:

ORDER

The application is dismissed.

[ABHAY S. WAGHWASE, J.]