



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4023 OF 2023
IN
CRIMINAL APPEAL NO. 1051 OF 2023

Bhima S/o. Baliram Dhumak,
Age : 30 years, Occu. : Agril.,
R/o. : Ghatewadi, Tq. Kaij,
District Beed.

... Applicant.
(orig. Accused)

Versus

1. The State of Maharashtra,
Through : The Police Station Officer,
Kaij Police Station, Tq. Kaij,
District Beed.

2. X.Y.Z.

... Respondents
(orig. Complainant)

...

Mr. Mahesh P. Kale, Advocate for Applicant.

Mr. N. D. Batule, APP for Respondent - State.

Mr. Ravindra J. Nirmal, Advocate for Respondent No.2 (Appointed
through legal Aid).

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 14 FEBRUARY 2024

PRONOUNCED ON : 21 FEBRUARY 2024

ORDER :

1. By way of instant proceedings, prayers are raised for suspension of sentence and grant of bail on account of conviction recorded by learned Special Judge (POCSO), Kaij, Dist. Beed in Special (POCSO) Case No. 03 of 2023 (old Special POCSO Case No.21 of 2017, by which guilt is recorded for offence punishable under section 363 of Indian Penal Code (IPC) and section 4 of the

Protection of Children from Sexual Offences Act, 2012(POCSO Act).

2. In support of relief, it is submitted that, there are allegations of kidnapping and commission of offence under section 4 of POCSO Act, thereby awarding sentence of five years and twenty years, respectively. Learned counsel for applicant submitted that, in fact prosecution had not established the very age of victim by adducing cogent, reliable and conclusive evidence. Findings arrived at by trial Judge are not supported by sound reasons, there is apparently improper appreciation. Therefore, appeal has been preferred questioning the legality of the judgment, however according to learned counsel as much more time would be required to hear and decide the appeal, he prays for suspension of sentence and grant of bail during pendency of appeal.

3. While opposing the relief, learned APP submitted that he is convicted for serious offence. Victim was 14 years of age. There are allegations of kidnapping and committing offence under section 4 of POCSO Act. Victim was examined. Examining doctor was also witness. In all 6 witnesses have been examined by prosecution. According to him, considering the gravity of the offence, relief as prayed may not be granted.

4. Learned counsel for victim also strongly opposed the application and he adopted the arguments advanced by learned APP.

5. Here is an application for suspension of sentence and grant of bail, as a result of conviction for offence under sections 363 of IPC and section 4 of POCSO Act. It seems that, at this stage attempt has been made to question the age of minor. Appreciation to that extent cannot be done at this stage.

6. Going through the evidence of prosecution, *prima facie* victim has given her age as 14 years. He has deposed about forcibly taken her while she was alone at around 10:00 p.m. in a car, when her parents and brother went for attending some programme. Victim has deposed about sexual intercourse without her wish, and being threatened, when refused.

Therefore, considering above testimony of victim, age and nature of accusations, prayers made for suspension of sentence and grant of bail cannot be considered. Hence I proceed to pass the following order :-

ORDER

The Criminal Application stands rejected.

(ABHAY S. WAGHWASE, J.)