



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4235 OF 2023
IN APPEAL/38/2024

. Nilesch Raju Zende
Age: 23 years, Occu.: Barber,
R/o. Georai Road, Shevgon,
Tq.Shevgaon, Dist.Ahmednagar. ..Applicant/
Org. Accused

Versus

1. The State of Maharashtra
Through Police Inspector,
Shevgaon Police Station,
Tq.Shevgaon, Dist.Ahmednagar.
2. XYZ ..Respondents
(Res.No.2 is Org. Informant)

...
Advocate for Applicant : Mr. Suvidh S. Kulkarni
APP for Respondent no.1 : Mrs.Chaitali Choudhari – Kutti
Advocate for Respondent no.2 : Mrs. Manjushri V. Narwade
(appointed)

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 04 JULY, 2024
PRONOUNCED ON : 08 JULY, 2024

ORDER :-

1. By way of instant application, convict for offence under

Section 376(2)(i)(j)(n) and 3 of the Indian Penal Code is praying for suspension of sentence and grant of bail during pendency of appeal preferred by him.

2. Learned counsel for the applicant submitted that initially there were allegations of offence under Section 363 of the IPC but subsequently Section 376 has been added. He pointed out that prosecution has rested its case on the evidence of eight witnesses, but according to him testimony of victim girl is relevant. He strenuously submitted that here prosecution has miserably failed to prove very age of the victim. Pointing to the cross-examination faced by victim, learned counsel submitted that admittedly girl has spent over one month with the applicant and had not raised hue and cry nor has resisted inspite of several opportunities. Thus, according to him, there was love affair between applicant and victim. She had attained discreet age. Medical findings also do not support sexual intercourse. Apart from delayed FIR, there is no convincing evidence and therefore, applicant has preferred appeal questioning the judgment and order of conviction and he has every hope of

succeeding in the same. However, according to him, appeal being of 2024, there are no immediate prospects of hearing appeal and so he prays for relief of both suspension of sentence as well as grant of bail.

3. Strongly opposing the above relief, learned APP as well as learned counsel appointed on behalf of victim pointed out that girl is a minor. There is ample proof on the point of her age. That she being minor, they both submit that theory of consent vanishes. According to learned APP, medical examination of victim having been done after a gap of 20 days, there may not be noticeable injuries or marks and examining Doctor in the cross-examination has stated to that extent. They both pointed out that sentence awarded is of 20 years. Offence is serious and therefore, they pray to reject the application.

4. Perused the testimony of victim. She has given her date of birth as 12-07-2007. After last paper, applicant allegedly took her to Nagar. Therefore, taking such date into consideration, apparently victim is below 18 years of age. Prosecution has

adduced evidence of Head Master PW3 Bhanudas Sahaji Satpute as well as staff of Panchayat Samiti PW4 Prashant Prabhakar Devlalikar. They both gave date of birth of victim as 12-07-2007. Therefore, *prima facie* date of birth is sufficiently proved. Therefore, fact that victim is a minor stands proved.

Tenor of cross-examination of victim, more particularly, para 2 shows that she had informed accused that she is not of marriageable age i.e. after he allegedly garland her. She has alleged that inspite of knowing her that she was of minor age, he committed sexual intercourse with her. Therefore, taking such testimony into consideration and there being sufficient evidence on the point of age, apparently, serious offence is committed. Applicant was not on bail during trial. He is sentenced to suffer 20 years imprisonment.

5. Considering the above material on record, this Court is not inclined to consider the relief as prayed. Accordingly, following order is passed :

ORDER

(I) Criminal Application No.4235 of 2023 is rejected.

(II) Fees of learned Counsel appointed for respondent no.2/victim is quantified @ Rs.3,000/- to be paid through High Court Legal Services Sub-Committee, Aurangabad.

(ABHAY S. WAGHWASE)
JUDGE