

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.66 OF 2024

IN

CRIMINAL APPEAL NO.179 OF 2024

Sadashiv Bhimappa Mang : Applicant/Orig. Accused

Vs.

The State of Maharashtra & Anr. : Respondents

Adv. Priyal G. Sarda, for the Applicant.

Mrs. M.R. Tidke, APP for the State.

Adv. M. S. Ansari (appointed) for the Respondent No.2.

CORAM : KISHORE C. SANT, J.

DATE : 28TH FEBRUARY, 2024

PC. :

1. Though this Court on earlier occasion had appointed Mr. M. S. Ansari through Legal Services Authority to assist Respondent No.2, however, in the same order, it is inadvertently mentioned that Legal Services Authority to appoint a lawyer to assist Respondent No.2.

2. Today, when the matter is called out, Mr. M. S. Ansari assisted this Court. Later on Ms. Gargi Joshi informs the Court that yesterday Legal Services Authority has given her a letter appointing her to represent Respondent No.2. Since already Mr. M. S. Ansari has addressed this Court, his appearance be taken in the order. Appointment of Ms. Gargi Joshi

therefore stands discharged.

3. Heard the parties.

4. This Application is preferred seeking suspension of sentence and release of the Applicant on bail. The present Applicant is convicted for the offences punishable under Section 376(2)(n) of the Indian Penal code and under Section 6 of the POCSO, Act. He is sentenced to suffer R.I. for 10 years and to pay fine of Rs.20,000/- in default to suffer R.I. for 1 year. He is further convicted for the offence punishable under Section 363 of the Indian Penal Code and sentenced to suffer R.I. for 3 years and to pay fine of Rs.5000/- in default to suffer R.I. 3 months. He is acquitted for the offence punishable under Section 323 by the learned Additional Sessions Judge, Sangali, by way of judgment dated 27.11.2020 in Special (POCSO) Case No.06/2018.

5. The case of the prosecution in short is that the victim left her house on 12.09.2016 and went to the accused. On 21.08.2017 victim made call on mobile of her father. Thereafter the brother came to take her home. After she was missing her father searched her but could not find. On 12.09.2016, F.I.R. came to be lodged for the offence punishable under Section 363 of the Indian Penal Code as the victim girl was missing on 12.09.2016. Thereafter the victim girl was not found. It is only on

21.08.2017 the victim called her brother on a mobile phone and told her whereabouts. The brother thereafter came to take her. The Applicant came to be arrested on 24.08.2017. The other sections came to be added in the F.I.R. In July, 2016 the victim got acquainted with accused on bus stop. They started chatting with the each other. It is thereafter on 12.09.2016 on the call by the accused the victim girl left her house. At that time her age was 17 years and 9 months. After she left the house, accused and herself went to various places. Thereafter, she stayed in the house of the Accused at village Golabhavi in Karnataka. It is alleged that during this period the accused committed sexual intercourse on many occasions. After trial he was convicted and was sentenced as stated above.

6. Learned Advocate for the Applicant vehemently argued the application. He submitted that it is clear case of the consensual relationship. When the victim left the house, she was 17 years and 9 months old. By appearance hardly she can be said that she was child. The Accused had no reason to know that the victim was child as she was just 3 months younger before completing 18 years. The fact that she stayed with the accused for such a long period for almost 11 months shows that there was no force applied by the Applicant. The victim was also carrying her own mobile with her. Had there any force used by the Applicant, she would

have certainly contacted her family members. Her not contacting even her family members shows that she had suffered no offence. Only after some disputes started between them, she filed a complaint. He further submits that since 24.08.2017 till 5.10.2017 Applicant was in jail. Thereafter he was released on bail during the trial. There is no complaint of misuse of the liberty. From the date of judgment i.e. 27.11.2020 he is again taken in the custody and since then he is in jail. He thus prays for bail on both the counts of merits as well as on the ground that he has put in more than 3 years in jail.

7. The Application is vehemently opposed by the learned APP and the learned Advocate for the Respondent No.2. They submit that at the time of leaving home the victim was a child. It is clear from the evidence of the victim that the Applicant committed sexual intercourse even before she attained majority. Assuming that the relations were consensual, the consent of the victim cannot be considered as she was a child when she left the house and prayed for rejection of the bail.

8. Learned Advocate for the Applicant had also relied upon the judgment reported in 1998 AIR SCW 2741 in the case of ***Kuldeep K. Mahato Vs. State of Bihar***. It was the case only under Sections 363, 366 & 376 of the I.P.C. as that time there was no POCSO Act. In that case the

victim was minor. The Court considered the conduct of the victim & accused that she offered bail stayed with the accused. In such circumstances bail was granted to the Accused.

9. This Court finds sufficient force in the argument of the learned Advocate for the Applicant. It is quite clear that there was no resistance at any point of time by the victim till 24.8.2017. One other fact is to be considered that exact dates of the sexual intercourse are not given. Most of the time when she was with the Accused she had already attained majority within 3 months.

10. Thus considering all these facts this Court is inclined to allow the Application. Hence the following order.

ORDER

- a) Application is allowed.
- b) The sentence awarded by the learned Additional Sessions Judge, Sangli by judgment and order dated 27.11.2020 in POCSO, Session Case No.06 of 2018 stands suspended.
- c) Applicant shall be released on bail on furnishing PR. bond and solvent surety in the sum of Rs.15,000/-, subject to condition that if the amount of fine is not

deposited, the same shall be deposited in the Trial Court.

- d) Applicant shall mark his presence before the concerned Police Station once in three months i.e. on every Sunday as per the convenient time of the Police Station Incharge.
- e) Applicant shall furnish contact details including his mobile number etc. to the concerned Police Station.
- f) Applicant shall keep informed about any change in above mentioned contact details immediately to the concerned Police Station.
- g) The Application stands disposed of.

(KISHORE C. SANT, J.)