

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.148 OF 2023
IN
CRIMINAL APPEAL NO.34 OF 2023**

Mahadeo Shrimant KambleApplicant
Versus
State of Maharashtra
and another Respondents

Mr. Abhijeet Rane, Advocate for the Applicant.
Mr. Swapnil V. Walve, APP for the Respondent-State.
Mr. B.V. Ghodekar, Advocate i/b. Sarvjit Patil, Advocate
(appointed) for the Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 29th JULY, 2024

P.C. :

1. This is an application for bail pending Appeal of the present Applicant.
2. Heard Mr. Abhijeet Rane, learned counsel for the Applicant, Mr. Swapnil Walve, learned APP for the Respondent No.1-State and Mr. B.V. Ghodekar, learned appointed counsel for the Respondent No.2.
3. The Applicant was the accused before the Additional Sessions Judge (Special POCSO), Solapur in Sessions Case

No.339/2018. The learned Judge, vide the judgment and order dated 15.11.2022, convicted the Applicant for commission of the offence punishable under Section 363 of IPC and sentenced him to suffer RI for one year and to pay fine of Rs.2,000/- and in default to suffer SI for one month. The Applicant was further convicted under Section 4 of the Protection of Children From Sexual Offences Act, 2012 (for short, 'POCSO Act') and was sentenced to suffer RI for ten years and to pay fine of Rs.5,000/- and in default to suffer SI for six months. He was also convicted for the offence punishable under Section 376 of IPC, but, no separate sentence was imposed in view of the sentence imposed under Section 4 of the POCSO Act. The substantive sentences were directed to run concurrently.

4. Learned counsel for the Applicant submitted that the case of the prosecution is that the victim was taken away by the Applicant on some pretext on 29.9.2018. According to her, he established physical relations with her without her consent. She was rescued on 4.10.2018 and then the FIR was lodged. The Applicant was arrested. The main circumstance in this case is the medical papers which show that the history given to the

doctor mentions that the incident had taken place four months prior to examination of the victim on 4.10.2018. This is an important circumstance which goes to the root of the matter because it was not her initial case that the incident had taken place four months prior to her examination. He submitted that there are many improvements in her deposition from her police statement which shows that she wanted to implicate the Applicant falsely.

5. He further submitted that on the date of incident the Applicant was 19 years of age. He is in custody for about six years out of the sentence of ten years. He submitted that the Appeal is not likely to be decided during the balance period of four years.

6. Learned APP as well as learned counsel for the Respondent No.2 submitted that the victim had made specific allegations against the Applicant which are mentioned hereinabove. They submitted that the medical evidence also supports the victim's evidence because the opinion of the doctor was that the overall findings were consistent with the sexual intercourse/assault. They submitted that considering the

seriousness of the offence and the evidence on record, bail may not be granted to the Applicant.

7. I have considered these submissions. The victim was examined as PW-3. Her evidence is important. According to her, her date of birth is 3.4.2002. Her date of birth is proved through the evidence of PW-7 Vikrant Gaikwad who was serving in the office of the Birth and Death Registration Office. At this stage, the date of birth of the victim cannot be said to be a false date given by her. If there is any discrepancy regarding her date of birth, it can be considered at the final hearing stage. However, at this stage, the evidence of PW-7 supports her case that her date of birth was 3.4.2002. The victim has further deposed that the incident took place on 29.9.2018, at about 2.00 p.m.. When she was going towards her hostel the Applicant met her. He was holding a bottle of poison. He consumed the poison. There was bleeding from his mouth. The victim got frightened and because of that she accompanied the Applicant. He had also threatened to lodge a complaint against the family members. The Applicant took her to Solapur Railway Station. Then she was taken to Kopergaon and then to Shirdi. He then took her to one garden

and tried to get physical with her. In the meantime, his money was exhausted. Therefore, he sold the victim's mobile phone. Then they again went to Kopargaon and then to Solapur. From there, the Applicant took her to his aunt's house at Dudhani. In the night, he established physical relations with her. On the next morning, the Applicant's grand-mother informed the Applicant's mother. She came there and informed the victim's uncle. Then the victim was brought to Solapur. The victim added that in June, 2018 the Applicant had taken her to Tirupati and had committed physical act with her.

In the cross-examination, she admitted that she had not stated before the police about the Applicant's having a bottle of poison and consuming it or that he had given threats or that he had sold her mobile phone. She had also not stated before the police that in June, 2018 he had taken the victim to Tirupati and had established physical relations with her. All these improvements are very important and sufficient doubt is created about the truthfulness of the victim's deposition. In addition, she has stated before the police and before the Magistrate that she had a love affair with the Applicant.

8. Thus, considering her evidence even at this stage, it can be seen that there is scope to believe that she was not telling the complete truth. The Applicant is a young boy. He was 19 years of age at the time of incident. He is in custody continuously for about six years. The maximum sentence imposed on him is ten years. In this background, I am inclined to grant bail to the Applicant pending his Appeal. Hence, the following order :

ORDER

- (i) During pendency and final disposal of Criminal Appeal No.34/2023 preferred by the Applicant, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) The Applicant shall not cause any harassment to the victim or her family.
- (iii) Interim Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)

Deshmane (PS)

Digitally signed
by
PRADIPKUMAR
PRAKASHRAO
DESHMANE
Date:
2024.07.31
14:11:30 +0530