

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.1091 OF 2023

IN

CRIMINAL APPEAL NO.334 OF 2023

Fantya @ Nagesh Narayan Raut : Applicant/Accused

Vs.

The State of Maharashtra & Anr. : Respondents

Adv. Vresh Purwant, for the Applicant.

Mr. A. R. Patil, APP for the State.

Adv. Sagar Ambedkar appointed for the Respondent No.2.

CORAM : KISHORE C. SANT, J.

DATE : 11TH MARCH, 2024

PC. :

1. Heard the leaned APP & learned Advocate appointed for the Respondent No.2.

2. This Application is filed for suspension of sentence and release of the Applicant on bail in connection with the Judgment & Order passed by the learned Special Judge (POCSO) & Additional Sessions Judge, at Solapur dated 01.03.2023 in Sessions Case No.128 of 2018. The Applicant is convicted for the offence punishable under Section 376 of the Indian Penal Code, 1860 and is sentenced to undergo R. I. For seven years & to

pay fine of Rs.5000/- and in default to undergo R.I. for 2 months. He is acquitted of the offences punishable under Sections 4 & 6 of the POCSO Act.

3. Learned Advocate for the Applicant vehemently argued the Application. He submits that in the present case the victim and her mother both have turned hostile. Age of the victim is not conclusively proved. Though the learned Headmaster of the school is examined. The offence is held to be proved only on the basis of a statement under Section 164 and DNA report of the new born baby. He submits that the Court itself had accepted that the age is not proved and therefore acquitted the Applicant from the offenses under POCSO. He submits that the Applicant was on bail during the trial. There is no complaint of misuse of the liberty. Applicant has also paid the fine amount. He prayed for suspension of sentence.

4. Learned APP vehemently opposes the Application stating that the DNA report shows that he is biological father of the new born baby. The headmaster of this school has proved the date of birth of the victim as 03/06/2000. The incident alleged is of 2017 and thus she was below 18 years of age. The finding of age is recorded on the basis of proof. He prays for rejection of the Bail Application.

5. Learned Advocate for the Respondent No.2 has taken this

Court through 164 statement. He submits that from 164 statements it is clear that, the victim has given her age to below 18 years. The incident is of 2016, he thus submits that, no case is made for grant of bail.

6. After the hearing the parties, it is seen that the Trial Court has doubted the age of the victim observing that it is not properly proved as there is a dispute about the name, in the Birth Certificate of the victim. The complaint is lodged only after the victim went to the doctor for abortion. Thus till that time there was no complaint made by the victim or her mother. From 164 statements there is no satisfactory explanation for delay in lodging the FIR except that the Applicant use to give threats. This Court finds that *Prima facie* case is made out for grant of bail of suspending the sentence. Hence the following order.

ORDER

- a) Application stands allowed.
- b) The sentence awarded by the learned Special Judge (POCSO) & Additional Sessions Judge, at Solapur dated 01.03.2023 in Sessions Case No.128 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 not enter in Mohol Taluka till the Appeal is decided except for attending the Police Station.
- e) Applicant shall mark his presence before the concerned Police Station once in month i.e. on every First Sunday as per the convenient time of the Police Station Incharge.
- f) Applicant shall furnish contact details including his mobile number etc. to the concerned Police Station.
- g) Applicant shall keep informed about any change in above mentioned contact details immediately to the concerned Police Station.
- h) The Application stands disposed of.

(KISHORE C. SANT, J.)