

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

**INTERIM APPLICATION NO.1623 OF 2023
IN
CRIMINAL APPEAL NO.1125 OF 2022**

Adhik Govind JadhavAppellant

V/s.

The State Of Maharashtra & Anr.Respondents

Mr.Vinayak Ramchandra Patil, for the Appellant.

Mr.P.P. Jadhav, APP, for Respondent-State.

Mr.Pranav Badheka, Appointed Advocate, for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 22nd OCTOBER 2024

P.C:-

. By this Application, the Applicant is seeking suspension of sentence and bail in Special Case No.91 of 2020.

2. The Applicant has been convicted for offence under Section 376(3) of the Indian Penal Code, 1860 ('IPC' for short) and sentenced to suffer RI for 20 years and fine of Rs.3,000/- in default SI for one month.

3. The Applicant has been convicted for the offence under Section 366 of the IPC and sentenced to suffer RI for 3 years and fine of Rs.3,000/- in default SI for one month.

4. The Applicant is convicted for the offence punishable under Section 363 of IPC and sentenced to suffer RI for three years and fine of Rs.3,000/- in default SI for one month.

5. The Applicant is convicted for the offenses punishable under Section 3(a) and 4(2) of Protection of Children from Sexual Offences Act and sentenced to suffer RI for 20 years and fine of Rs.5,000/- in default SI for one month.

6. The Applicant is convicted for the offence punishable under Section 11 (i) read with section 12 of Protection of Children from Sexual Offences Act and sentenced to suffer RI for one year and fine of Rs.2,000/- in default SI for one month.

7. It is prosecution case that, the Applicant and victim were knowing each other. They were residing in same village. The Applicant sexually assaulted the victim, he kidnapped the victim and took her at various places. At the time of the incident, the Applicant was 27 years old, whereas the victim was 13 years and 4 months old.

8. It is contention of learned counsel for the Applicant that, the Applicant has been falsely implicated in this case as there

was love relationship between the Applicant and the victim. He further submitted that, the victim in her deposition before the trial Court has stated that, she was sexually assaulted on 8th or 9th October 2020. She was not aware about the exact date. The learned counsel further submitted that, thereafter the Applicant and victim's eloped and stayed at various places. The victim has deposed that, during that period Applicant had no physical relations with her. The medical examination of the victim was done on 20th October 2020. It has come in the cross-examination of doctor, who medically examined the victim that in history of sexual assault victim has not stated the name of the Applicant. The Applicant is unmarried. He is behind bar more than 2 and ½ years. He is Karta of his family. It may take time to dispose of the Appeal. He was on bail during the trial. He has not misused the liberty. Hence, requested to allow the Application.

9. It is contention of the learned APP along with learned counsel for the Respondent No.2 that, at the time of the incident the victim was 13 years and 4 months old. The

Applicant was aware about her age. The Applicant was 27 years old. He sexually assaulted the victim, he kidnapped her. The victim's statement before the Police under Section 161 of Cr.P.C. and before the Magistrate under Section 164 of Cr.P.C. are consistent. She has deposed before the Court about sexual assault on her by the Applicant. The medical evidence produced on record corroborates the statement of victim. The prosecution has proved the case against the Applicant. Accordingly, Applicant has been convicted. If the Applicant is released on bail he may abscond. Hence, requested to reject the Application.

10. The learned counsel for Respondent No.2 relied on following judgments.

- (i) Birbal Nath V/s. State of Rajasthan & Ors.¹
- (ii) Joubasen Tripura V/s. State of Tripura²
- (iii) Phool Singh V/s. State of Madhya Pradesh³
- (iv) Ganesan V/s. State Represented by Its Inspector of Police⁴

11. I have heard all learned counsel. Perused impugned judgment/order and deposition of witnesses produced on record.

1 2023 SCC Online SC 1396

2 2021 SCC Online Tri 176

3 (2022) 2 SCC 74

4 (2020) 10 SCC 573)

12. Evidence of PW-2-Victim is at Exhibit-22. She has stated that, the Applicant stays near her house and there was love affair between them. On 8th October 2020 her friend told her that her family members were settling her marriage. Hence, this witness had made phone call to her friend Pooja and told Applicant that, her marriage is settling and on next day she met the Applicant, they discussed, at that time, the Applicant told her that they will perform marriage. Thereafter, they went to the house of the Amit Kamble friend of the Applicant at Ranjangaon, Pune. They stayed there for two days and thereafter they went at various places. Thereafter, Police brought Applicant and victim to Umraj. She further stated that, while giving statement before the Police, she has stated that there was no sexual intercourse between Applicant and her. She further stated that, on the same day her statement was again recorded that time she disclosed that, on the day when they eloped, in morning hours, the Applicant had sexual intercourse with her in cattle shed adjacent to house of the Applicant. It might be on 8th October 2020 or 9th October 2020. She has not stated about sexual intercourse in first time as

her mental condition was not proper. But she has stated at the time of medical examination before doctor about sexual relation with Applicant. Accordingly, police recorded her statement. She further stated that, her statement was recorded before Judicial Magistrate First Class, Karad on 31st October 2020 and in that statement she has stated that on 8th October 2020 at 10.00 a.m. the Applicant had sexual relation with her in cattle shed near his house. It is at Exhibit-23.

13. In cross-examination she admitted that, prior to incident Applicant was her best friend and her online classes started at 8.00 a.m. or 9.00 a.m. and it goes upto 5.00 p.m. She admitted that, she was attending online lectures on mobile in her house and she has not missed online lectures in month in month of October 2020. She further admitted that, her family members came to know that, she was liking the Applicant and her family members were settling her marriage against her will, hence, she was angry.

14. In cross-examination she further admitted that, she asked help of the Applicant and on 8th October 2020 she gave

mobile call to Applicant from mobile of her father and told him that, her family members are settling her marriage against her wish. She further admitted that, she did not meet Applicant on 8th October 2020. Statement given to the Police was confronted to this witness. She has admitted that, she has not stated before the Police that on 9th October 2020 at about 11.00 a.m. she met to the Applicant in cattle shed near his house. From the evidence of this witness, it appears that, though this witness states that, the Applicant sexually assaulted her on 8th or 9th October 2020 but it appears that in the month of October she attended her online classes. Before police she has stated that, the Applicant sexually assaulted her on 9th October 2020 but before Court she has stated that she sexually assaulted by the Applicant on 8th October 2020. There is discrepancy in the date about the sexual assault by the Applicant on her. To prove sexual assault the prosecution has examined PW-6 Dr.Sanjay Kumbhar he has stated that, he has examined Applicant on 20th October 2020 and he gave opinion that, sexual violence cannot be ruled out. In cross-examination he admitted that, name of the Applicant was not told by the

victim and it is also not mentioned in the history column. He further admitted that, he had not found marks of sexual violence. Considering evidence of the victim and medical officer who examined the victim as well as Applicant is behind bar more than 2 years. He is unmarried. He is Karta of his family. During trial he was on bail and he has not misused liberty. I am inclined to allow the Application.

15. I have gone through the case laws cited by learned counsel for Respondent No.2. The facts of the cited case and present case are different, as in the present case the alleged sexual assault was prior to kidnapping of the victim, during kidnapping period there was no allegations of the sexual assault and there is discrepancy in the statement of the victim about the date of the sexual assault. She has not stated name of the Applicant to the medical officer while medical examination. In view of above, I pass following order.

ORDER

- (i) The Applicant-Adhik Govind Jadhav be enlarged on bail in Crime No.415 of 2020

registered with Umbraj Police Station, Karad on executing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount.

16. The Application is allowed in the aforesaid terms and is accordingly disposed off.

17. All concerned to act on the authenticated copy of this order.

(SHIVKUMAR DIGE, J.)