

**INTERIM APPLICATION NO. 2256 OF 2023
IN
CRIMINAL APPEAL NO. 706 OF 2023**

Mr. Satyavrat Joshi with Mr. Ashish Vernekar, for the Applicant/Appellant.

Ms. Gayatri R. Khanvilkar, for the Respondent No. 2.

DATE : 23RD JANUARY 2024.

1. Heard the parties for some time.
2. This application is filed seeking suspension of sentence awarded by the learned Extra Joint Additional Sessions Judge, Karad in Special Case No. 17 of 2021 under POSCO Act on 26th April 2023. The accused is convicted for the offences punishable under Section 376 (2) (n) of the Indian Penal Code and is directed to suffer rigorous imprisonment for ten years and to pay fine of Rs. 25,000/-, in default,

undergone rigorous imprisonment for one year. The applicant is acquitted of the offence punishable under Section 376 (3) of Indian Penal Code and under Sections 3(a) and 5 (j)(ii) of Protection of Children from Sexual Offences Act, 2012 (for short “POCSO” Act).

3. Learned advocate for the applicant submits that during the course of the trial the applicant was in jail from 15th January 2021 till 19th April 2021 i.e. till he was released on bail and from the date of judgment i.e. 26th April 2023 he is again in jail. He has suffered about one year imprisonment. There is no complaint of misused of liberty. However fine amount is not paid. On merits learned advocate for the applicant submits that the victim herself is declared as hostile. The victim was pregnant and therefore, DNA test was conducted which clearly excluded the accused as biological father of the child. In the cross examination by the APP, she only stated that there was sexual intercourse with male and because of that she became pregnant. Further, statement shows that she disclosed this fact to the present accused who happens to be son of her paternal cousin Aunt. He invited attention to the statement recorded under Section 164 of Cr.PC. by the learned JMFC where she has stated that there was love affair between her and the accused. Learned advocate thus submits that there is a

clear case made out to release the accused on bail.

4. Learned APP opposes the application stating that at the time of incident the victim was minor and therefore he is rightly convicted.

5. Learned advocate for the respondent no. 2 also vehemently opposes the application who is also invited attention to the deposition of the victim and the IO in the deposition of the victim has stated her date of birth is 10th June 2006 and IO also confirmed that the date of birth of the victim is 10th June 2006. She thus submits that no case is made out to grant bail to the accused.

6. Though the learned APP and learned advocate for respondent no. 2 have argued on age of the victim, however, learned trial Court has acquitted the accused from offences under POCSO Act. No appeal against acquittal is preferred.

7. This Court has gone through the report. It is seen that though the victim was stated to be minor at the time of incident. However, her date of birth is not proved, no school certificate is exhibited. Looking at the fact that under 164 Cr.P.C. the prosecutrix herself had stated that she had love affair with the accused. Even as per the DNA report this Court finds that the case is made out to release

the applicant on bail by sentencing the sentence. However, he has not deposited fine amount. On depositing the fine amount, it would be appropriate to allow the application. Hence, the following order:

ORDER

- i) The application is allowed.
- ii) Substantive sentence awarded for the offence under Section 376 (2) (n) by learned Extra Joint Additional Sessions Judge, Karad in Special Case No. 17 of 2021 under POSCO Act is suspended.
- ii) The applicant shall be released on bail on furnishing P.R. bond of Rs.25,000/- and one solvent surety in the like amount. Subject to condition that if the amount of fine is not deposited, the same shall be deposited in the trial Court.
- iv) The applicant shall keep informed concerned Police Station about his residential address, mobile number etc and other contact details till the final disposal of the appeal.

8. The application stands disposed off.

(KISHORE C. SANT, J)