

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL INTERIM APPLICATION NO. 2676 OF 2023

IN

CRIMINAL APPEAL NO. 831 OF 2023

Gourav Satish Kamble

... Appellant
/Applicant

Versus

State of Maharashtra and Anr.

... Respondents

.....

Mr. Aniket Nikam a/w. Mr. Amit Icham, Mr. Sumit Patil, Ms. Shreya Anuwal and Mr. Pratik Jadhav, Advocates for the Appellant/Applicant
Mr. Vinit A. Kulkarni, APP for Respondent No.1 - State.
Ms. Manisha Jagtap, Advocate for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATED : 10th OCTOBER, 2024.

P.C. :

1. By this application, applicant is seeking suspension of sentence and bail in FIR No.235 of 2017 registered with Shahupuri Police Station. The Special Court at Kolhapur has convicted the applicant by Judgment and Order dated 16.05.2023 under Section 376(2)(n) of Indian Penal Code (for short "**IPC**") and sentenced to suffer rigorous imprisonment for ten years and to pay a fine of Rs.25,000/- in default to suffer rigorous imprisonment for one year. The appellant has been also convicted under Section 506 of IPC and sentenced to suffer rigorous imprisonment for two years and to pay a fine of Rs.5,000/- in default to suffer rigorous

imprisonment for six months.

2. It is the contention of learned counsel for the applicant that applicant has been acquitted from the charges of Protection of Children from Sexual Offences Act, 2012 (for short “**POCSO Act**”). It means at the time of incident the victim was more than 18 years old. The complaint was lodged against the applicant when there was pain in the stomach of the victim and after sonography it found that she was pregnant. When the mother of victim inquired with her, victim told that applicant sexually assaulted her on various occasions on the promise of marriage. Learned counsel further submitted that there was 8 days delay to record the statement of victim after lodging the FIR. Physical relations between the applicant and victim were consensual. Applicant is behind bar more than 1.5 year. During the trial applicant was on bail. It may take time to dispose of the appeal filed by the applicant, hence requested to allow the application.

3. It is the contention of learned APP for State and learned counsel for respondent No.2 that applicant sexually assaulted the victim by giving threat to her. DNA report of the fetus matches with the DNA of the applicant. The involvement of the applicant in the crime has been proved before the trial Court accordingly applicant has been convicted. If applicant released on bail he may abscond. Learned APP further submitted

that at the time of incident the victim was minor and applicant was aware of her age, hence requested to reject the application.

4. I have heard all learned counsel. Applicant has been acquitted from the charges under POCSO Act. The offence was registered against the applicant when there was pain in the stomach of the victim and when her mother did sonography of the victim, it found that she was pregnant of more than three months. It shows that for three months victim did not complaint anyone about the alleged sexual assault. During the trial applicant was on bail. He did not misuse the liberty. The applicant is karta of his family. It may take time to dispose of the appeal. Considering these facts, I am inclined to allow the application and I pass following order.

5. In view of above, the applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of the appeal, on the following terms and conditions :-

ORDER

(i) The applicant be enlarged on bail in FIR No. 235 of 2017 registered with Shahupuri Police Station on furnishing P.R.Bond in the sum of Rs.25,000/- with one or two sureties in the like amount.

6. The Interim Application is allowed in the aforesaid terms and is accordingly disposed of.
7. All concerned to act on the authenticated copy of this order.

(SHIVKUMAR DIGE, J.)

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