

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

**INTERIM APPLICATION NO.3677 OF 2023
IN
CRIMINAL APPEAL NO.1112 OF 2023**

Rohan Dattatraya Shete

.... Applicant

versus

The State of Maharashtra & Anr.

.... Respondents

.....

- Mr. Satyavrat Joshi, Advocate for Applicant.
- Mr. Vithal B. Konde-Deshmukh, APP for the State/Respondent.
- Ms. Priyanka H. Chavan, appointed advocate through Legal Aid Panel, for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 01st JULY, 2024

P.C. :

1. This is an application for bail pending Appeal. The Applicant was the accused in Special Case No.36/2020 before the Extra Joint Additional Sessions Judge, Karad. Learned Judge vide the Judgment and Order dated 21/08/2023 convicted the Appellant for commission of offence punishable under sections 376(2)(f) and 376(2)(n) of the Indian Penal Code and for commission of offences under section 4 (2) and 5(j)(ii)

punishable under section 6 of the the Protection of Children from Sexual Offences Act, 2012. The major sentence imposed was for 20 years rigorous imprisonment besides imposition of fine of Rs.50,000/- u/s 4 and 6 of POCSO each and to pay a fine of Rs.25,000/- u/s 376(2)(f), 376(2)(n) of the Indian Penal Code each.

2. The Applicant was on bail during the trial. He is taken in custody after his conviction on 21/08/2023.
3. Heard Mr. Satyavrat Joshi, learned counsel for the Applicant, Ms. Priyanka H. Chavan, learned counsel for the Respondent No.2 and Mr. Vithal B. Konde-Deshmukh, learned APP for the State.
4. Learned counsel for the Applicant submitted that the date of birth certificate of the victim is not proved. The victim has admitted that it was purely a consensual relationship. The mother had changed her name in the official gazette. All this indicates that though it was a consensual relationship, the victim

was not proved to be below 18 years of age and therefore no offence is made out. Hence the Applicant deserves to be released on bail.

5. Learned APP as well as Respondent No.2 opposed these submissions. They relied on the evidence of the victim and the also the birth certificate, which is on record at Ex.19 and which is not really been shaken in the evidence.

6. I have considered these submissions. The victim has stated that her date of birth was 15/08/2004, which is in consonance with the birth certificate. She has described that her biological father had passed away and then her mother had married her stepfather. The Applicant was her cousin. He was married, but his wife had left him. He used to visit her house on Fridays and Saturdays and used to establish physical relations with her, when her mother was not around. That resulted in her pregnancy. Therefore, her mother came to know about the incident. The FIR was lodged at the police station. She was medically examined. Blood samples were drawn. The Applicant

was arrested. His blood sample was also drawn. The pregnancy was terminated. However, the samples were preserved. The evidence shows that the samples were sent for DNA examination. The evidence of P.W.11 who was Assistant Chemical Analyzer Regional FSL, shows that according to him the victim and the Applicant were concluded to be the biological parents of the sternum bone piece of abortus of the victim. Thus, there is sufficiently strong material against the present Applicant. The victim's age during that period was 14 years and 10 months from June 2019 upto February 2020. She was a minor. The offence is made out. No case for grant of bail pending Appeal is made out. The application is rejected.

(SARANG V. KOTWAL, J.)