

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

**INTERIM APPLICATION NO.3891 OF 2023
IN
CRIMINAL APPEAL NO.1178 OF 2023**

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Swapnil Kumar Koli ..Applicant/Appellant
Versus
The State of Maharashtra & Anr. ..Respondents

Mr. Shailesh Kharat, for the Applicant/Appellant.
Mrs. M. R.Tidke, APP for the Respondent/State.
Mr. Ashwek Bhoir, for the Respondent No.2.

CORAM : KISHORE C. SANT, J.

DATE : 15th JANUARY, 2024

PC.

1. Heard the parties at length.
2. This Application is filed seeking suspension of sentence awarded by the learned Additional Sessions Judge, Special Court (POCSO), Kolhapur dated 25.07.2023 in POCSO Special Case No.91 of 2018. The learned Judge held the present Applicant guilty of offence punishable under Sections, 361, 363, 366 and 376 of the IPC and Section 4 of the POCSO Act. The maximum sentence awarded for offence under Section 376 of IPC is ten years and to pay fine of Rs.15,000/-. For the offence punishable under Section 366 of IPC, he is directed to undergo rigorous imprisonment of three years and to pay fine of Rs.10,000/-. Further he is sentenced

to undergo rigorous imprisonment for three years and to pay fine of Rs.5000/- for the offence punishable under Section 361 r/w 366 of IPC. No separate sentence is awarded for the offence under Section 4 of the POCSO Act.

3. Learned advocate for the Applicant has taken this Court through the evidence of the victim/PW-2 and her mother/PW-4. From the evidence of victim, it is pointed out that the victim girl has clearly given an admission that she was having love relations with the accused and they wanted to marry each other. So far as age of the victim is concerned, he submits that no school record/certificate was produced during the course of trial. Through the evidence of mother, only certificate issued by the Gram Panchayat was produced on record. There are various doubts created about the said certificate. He further pointed out that the learned Judge however relied upon Exh.91, a school certificate, which was produced after the arguments were over and just before the judgment. He submits that no opportunity was granted to the accused to cross-examine the witness who produced secondary school certificate Exh.91 to prove age of victim. This evidence thus could not have been accepted by the Court.

4. Learned advocate for the victim submits that the victim has no objection to release the Applicant on bail. He has also stated on affidavits of victim and father of the victim to that effect. The affidavits are taken record. The affidavit filed by victim is read in

context of the admissions given by the victim about love relations with the accused.

5. Learned APP submits that even if the relationship appears to be consensual relationship, looking to the age of the girl, who was minor at that time, no benefit can be granted to the accused. She also submits that for the purpose of age, Exh.30 is already there on record, which is rightly relied upon by the Court. Though Exh.91 is produced after the final arguments, however, if that certificate is ignored, still the prosecution has proved the age and prays for dismissal.

6. Considering the arguments and evidence on record, *prima-facie*, this Court finds that the relations between the victim girl and the accused were consensual. From the evidence, it is seen that the victim and the accused were taking education in the same College and for that purpose they used to go in the same bus from their village. The age of the victim at the time of offence was 17 years and 4 months, whereas the accused was 19 years of age. As it is also clear from the evidence *prima-facie* that there were love relations between the parties, about age proof, there is clear doubt as the school certificate though was available, was not produced during the course of trial and certainly could not have been read and relied upon by the learned Trial Court. One more factor needs to be considered now, the victim is married and stays at a different place. Considering this aspect, so also, Applicant has already paid

fine amount, this Court finds that a case is made out for grant of bail and suspend the sentence.

7. Hence the following order is passed :-

- i) The Application stands allowed.
- ii) Substantive sentence awarded by judgment and order dated 25th July, 2023 passed by the learned Additional Sessions Judge, Special Court (POCSO), Kolhapur in POCSO Special Case No.91 of 2018 stands suspended.
- iii) Applicant shall be released on bail on furnishing PR bond and solvent surety in the sum of Rs.30,000/-.
- iv) Pending the Appeal, Applicant shall furnish his contact details, residential address etc. to the concerned Police Station. In case, there is any change, he shall immediately inform such changes to the concerned Police Station.
- v) Applicant shall not try to contact the victim or her relatives.

8. The Application as such stands disposed of.

[KISHORE C. SANT, J.]