

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

**INTERIM APPLICATION NO. 3462 OF 2023
IN
CRIMINAL APPEAL NO. 1051 OF 2023**

Sachin @ Satish Subhash PakhareApplicant
V/S
State Of Maharashtra And Anr.Respondents

Mr. Uday P. Wanrujekar a/w. Ms. Sonali R. Chavan & Mr. K. Hrishikesh Nabar
i/b. Mr. Sumit S. Kate for Applicant
Mr. V. A. Kulkarni, APP for Respondent No.1-State
Ms. Saima Ansari i/b Mr. Fakruddin C. Khan (through L.A.) for Respondent
No.2.

CORAM : M. M. SATHAYE, J.

DATED : 6th DECEMBER 2024

P.C.:

1. Heard learned Counsel for the Applicant/Convict, learned APP for the Respondent-State assisted by learned Counsel for the Respondent No. 2-Victim.

2. This is an Application for suspension of sentence and interim bail. By the impugned order dated 18.07.2023 passed in Session Case No. 338/2018, the Applicant/sole Accused has been convicted u/s. 376(3), 354-A, 506 of the Indian Penal Code ('IPC' for short) and u/s. 3, 4, 5(j)(ii), (m), 6, 7, 8, 11 & 12 of Protection of Children from Sexual Offences Act, 2012 ('POCSO Act' for short) and he is sentenced to suffer rigorous imprisonment of 20 years in addition to fine. The Appeal is already admitted in November 2023.

3. Learned Counsel for the Applicant submitted as under. The Applicant is young man of 26 years as on today. The victim was residing with her family in a temporary zopadi when the victim's family was engaged in sugarcane cutting labour and accused was driver of the tractor/trolley, who used to visit the victim's family in the said Zopadi. It is also submitted that when the alleged incidence is of December 2017 but it is reported in August 2018. It is submitted that there is a serious inconsistency in the evidence about the age of the victim. In the complaint filed by victim's father, age is stated as 13 years. During in-camera statement of the victim before Court, the date of birth is stated as 10/04/2000. In the statement of father recorded u/s. 164 of the Criminal Procedure Code, 1973 ('Cr.P.C.' for short), victim's age or date of birth is not mentioned. In Victim's statement u/s. 164 of the Cr.P.C., age is stated as 13 years in a format as per complaint. In the evidence of the head-master of the school where the victim studied (PW7), it has come on record that at the time of admission, affidavit of maternal aunt of victim regarding date of birth was obtained. The admission form was signed by maternal aunt. It is submitted that this maternal aunt is not examined by the prosecution. Evidence of P.W. No. 9-Medical Practitioner shows that certificate of age is issued by him, on the basis of opinion of Radiologist, supposing the age of the victim as between 12 to 14 years. It is submitted that this witness has only issued certificate, based on the opinion of the Radiologist. The report of the Radiologist is not placed on record nor the Radiologist is examined.

4. On these submissions, it is urged that the age of victim according to in-camera statement will be about 17 years on the date of incident i.e. December 2017 and therefore that being more than 16 years, minimum

punishment of 10 years may apply; the Applicant has already undergone about 6 years and one month of detention ever since he was arrested on 03/10/2018. Therefore it is urged that bail be granted.

5. *Per contra*, learned APP for the Respondent-State, assisted by learned Counsel for the Respondent No. 2-Victim submitted that the presumption u/s. 29 and 30 of the POSCO Act and u/s. 114-A of the evidence Act will have to be considered. The defense has not put any question to the witness P.W. No. 9-Medical Practitioner about non-availability of the report of the Radiologist. It is submitted that at the stage of the interim bail, evidence on record cannot be re-appreciated or re-considered. It is further submitted that there is no question of format etc. as contended by the Applicant in the statement u/s 164 of the Cr.P.C. and the age mentioned therein by the Victim herself is correct and proper. It is submitted that if either school record or statement u/s. 164 of the Cr.P.C. or radiology test is considered, the age of the victim is below 16 years and as such, the sentence of 20 years awarded is legal and proper.

6. I have considered the submissions carefully and perused the documents referred during the arguments. Indeed, the Appeal is admitted in November 2023 and not likely to be taken up in short time.

7. The offence is of serious nature and the sentence awarded is of 20 years. As per the law laid down by Hon'ble Supreme Court in paragraph 33 of **Omprakash Sahni vs. Jai Shankar Chaudhary & Anr.**¹, the Court will have to see whether the convict has fair chance of acquittal on the basis of something palpable or so apparent or gross on the face of the record, on the

¹ (2023) 6 SCC 123

basis of which, the Court can arrive at *prima facie* satisfaction that the conviction may not be sustainable. The Court will have to check if this threshold is crossed in the present case.

8. Except the statement of the victim (in-camera), all other documents indicate age of victim below 16. As per school record, the date of birth of the victim is 10/04/2008 and therefore in December 2017, she was not even 10 years old. As per complaint by the father & the statement of the victim u/s. 164 of Cr.P.C., her age is 13 years. Medical evidence indicates the age of the victim as 12 to 14 as per certificate Ex. 54 on the basis of radiology/ossification test. This is not the stage of re-appreciation of evidence. Therefore, at this stage, the argument about 'possibility of reduction of sentence to 10 years' cannot be considered in favour of the Applicant, so as to give benefit of more than half of 'possible sentence' suffered.

9. It is not disputed that as per DNA test, the Applicant has been found as biological father of the child born to victim.

10. In the aforesaid circumstances, I am not inclined to grant bail. The Application is accordingly rejected.

(M. M. SATHAYE, J.)