

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL INTERIM APPLICATION NO. 4110 OF 2023****IN****CRIMINAL APPEAL NO. 1290 OF 2023**

Shivaji Basvanna Ingavale

... Applicant

Versus

State of Maharashtra and Anr.

... Respondents

Mr. Harshad Sathe a/w. Mr. Saurabh Butala, Advocates for the Applicant.
Mr. Shrikant H. Yadav, APP for Respondent No.1- State
Mr. Ajinkya Udane a/w. Mr. Vinayak Pandit and Maitreyee Garade,
Advocates for Respondent No.2 - appointed through legal aid.

CORAM : SHIVKUMAR DIGE, J.**DATED : 10th OCTOBER, 2024.****P.C. :**

1. By this application applicant is seeking suspension of sentence and bail in Special Case No. 40 of 2017.
2. The applicant has been convicted by Extra Joint District Judge and Additional Sessions Judge, Sangli under Section 376 of Indian Penal Code (for short "IPC") and under Section 4 of of the Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act") and sentenced to suffer rigorous imprisonment for 8 years and to pay fine amount of Rs.15,000/- in default to suffer further rigorous imprisonment for one year.
3. It is prosecution's case that on 04.04.2017 the complainant lodged complaint in MIDC, Kupwad Police Station stating that his daughter was

missing. In investigation, police found the daughter of complainant i.e. victim with applicant in one room. In statement the victim has stated before the police that applicant took her in rickshaw, he took her to Jyotiba hills. Applicant threatened the victim. Thereafter applicant took her at Kagal, he kept the victim in one room and sexually assaulted her by giving promise of marriage.

4. It is contention of learned counsel for the applicant that at the time of incident victim was more than 16 year and 3 months old. There was love affair between victim and applicant. Victim herself had come with the applicant. No birth certificate was produced on record to prove the age of victim. No birth certificate was produced before the police at the time of registering FIR. It was produced at the later stage of trial. The actual age of the victim has not been proved. Applicant is behind bar more than two years and six months. During the trial applicant was on bail. Applicant is karta of his family. It may take time to dispose of the appeal filed by the applicant, hence requested to allow the application.

5. It is the contention of the learned APP for State and learned counsel for respondent No.2 that applicant kidnapped the victim from her house. Applicant was aware that she was minor. He took her at various places, he threatened her. He kept her in one room and sexually assaulted her. The medical evidence supports the victim's statement. It has been proved that

applicant had sexually assaulted the victim. If applicant is released on bail he may abscond. Learned APP further submits that in cross examination of the victim the question was put to the victim by learned counsel for the applicant that when victim performed marriage with another person, she was minor. It proves that applicant was aware about the age of the victim as she was minor. Considering these facts both the learned counsel requested to reject the application.

6. I have heard all learned counsel. Perused impugned Judgment and order and record produced on record. At the time of incident the victim's age was more than 16 years and 3 months. It appears from record that victim was taken by the applicant at Jyotiba Hill and thereafter at Kagal and he sexually assaulted her by giving promise of marriage. The medical evidence supports the prosecution's case. The applicant has been convicted for 8 years. Applicant is behind bar more than two years and six months. During the trial he was on bail. He has not misused liberty. He is karta of the family. It may take time to dispose of the appeal filed by the applicant. Considering these facts I am inclined to allow the application and I pass following order.

7. 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 Special Case No. 40 of 2017 registered with Kupwad Police Station on furnishing P.R.Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;

8. The Interim Application is allowed in the aforesaid terms and is accordingly disposed of.

9. All concerned to act on the authenticated copy of this order.

(SHIVKUMAR DIGE, J.)

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