

Sandesh Sudarshan Kamble	...	Applicant/Appellant
V/s.		
State of Maharashtra & Anr.	...	Respondents

Mr. A.R. Metkari, APP, for the State.

DATE : 16TH APRIL 2024.

1. Heard learned advocate for the applicant and learned APP for the State. This application is filed seeking suspension of sentence and release of applicant on bail in connection with the judgment and order dated 11th September 2023 passed by the Special Judge under POCSO Act, Greater Mumbai in POCSO Special Case No-448 of 2017. The applicant is held guilty of the offence punishable under Sections 4, 6(L) and 12 of the Protection of Children from of Sexual Offences, (for short, “the POCSO”) Act, 2012 and under Section 385 and 506 of Indian Penal Code, (for short, “IPC”). The maximum sentence is awarded is for the offence punishable under section 6(L) of the POCSO

Act, and directing the applicant to suffer RI for 10 yers and to pay fine of Rs. 3,000/- in default, to undergo further SI for 2 months. Further offence punishable awarded is lesser than 10 years.

3. Learned advocate for the applicant vehemently argued that in this case it is clearly established that the relationship was consensual relationship. The victim was about 17 years of age. She never made any complaint to anyone. There was love affair between the victim and the accused. The victim even used to give money to the accused-applicant, whenever he was a need of money. They were in regular contact with each other and they also used to communicate on Facebook. She further submits that the accused came to be arrested on 25th June 2017 and since then he is in jail. The maximum punishment is of 10 years out of which he has already undergone almost 7 years considering remissions etc. She submits that though the applicant was tried for other sections of the act he came to be acquitted from section 67 (a) (b) of the I.T. Act.

4. Learned APP vehemently argued that in this case prosecution has established the offence. It has also come on record that the accused-applicant used to blackmail the victim and thereby used to take money from her. Merely because the applicant has suffered about 7 years sentence is no reason to allow the application.

5. This Court has seen *prima facie* case it is apparent that the relations were consensual relations. The victim even used to give money to the accused-applicant, whenever he needed. Her age is more than 17 years and thus it cannot be ascertained by appearance that girl is below 18. This Court has also considered mainly that the applicant has suffered about 7 years of sentence The appeal is of 2024 and it is

not likely to be heard till the sentence is suffered. Considering the ratio of judgment in case of '*Bhagwan Rama Shinde Gosai and Ors. Vs. State of Gujarat*¹', this Court is of the view that the application needs to be allowed. Hence the following order:

ORDER

- i) Application is allowed.
- ii) Substantive Sentence awarded by the Special Judge under POCSO Act, Greater Mumbai in POCSO Special Case No-448 of 2017 vide judgment and order dated 11th September 2023 stands suspended.
- iii) The applicant shall be released on bail on furnishing P.R. bond Rs. 15,000/- and one solvent surety in the like amount, subject to payment of the fine amount if not paid in the trial Court.
- iv) The applicant shall not enter in the jurisdiction of Worli Police Station except for attending the police station on every 2nd and 4th Sunday between 11:00a.m. to 1:00p.m.
- v) The Applicant shall furnish details of residential address and other contact details such as mobile number etc. to the concerned police station. If there is any change in the contact details the same will be immediately informed to the concerned police station.

1 (1999) 4 SCC cases 421

6. With this, the application stands disposed of.

(KISHORE C. SANT, J)