

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

**INTERIM APPLICATION NO.1365 OF 2023
IN
CRIMINAL APPEAL NO.430 OF 2023**

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Gandhar Pradip Salvi ..Applicant/Appellant
Versus
The State of Maharashtra & Anr. ..Respondents

Mr. A. S. Khandeparkar, Senior Advocate a/w Rohit P. Mahadik,
Rushikesh G. Bhagat, Farhan Shaikh, Vaibhav Kulkarni, Prerak A.
Sharma, Apoorva Khandeparkar, Saurabh Mittal & Nihir U. Dedhia
i/by Khandeparkar & Associates, for the Applicant/Appellant.
Mrs. M. R. Tidke, APP for the Respondent/State.
Mr. Ninand Muzumdar, for the Respondent No.2.

CORAM : KISHORE C. SANT, J.

DATE : 17th JANUARY, 2024

PC.

1. This application is filed seeking suspension of sentence awarded by the learned Extra Joint District Judge and Additional Sessions Judge, Ratnagiri dated 21.02.2023, whereby the accused/present Applicant is held guilty for the offences punishable under Sections 376 and 506 of IPC and Sections 4 and 8 of POCSO Act. The maximum sentence awarded is of seven years and to pay fine of Rs.10,000/- and in default to suffer simple imprisonment of one year. Fine amount is already paid. During the trial, the accused was on bail, however, since the date of judgment, he is in jail.

2. Learned senior advocate at the outset submits that in this case glaring fact is that the victim herself has turned hostile. In her evidence, she has clearly deposed that the FIR was lodged at the instance of her mother and she had not made any complaint prior to the date of the FIR. At the time of lodging of the complaint, the victim was of 17 years and 5 months old. He took this Court to the evidence of the victim, who is declared as hostile. From the lengthy cross-examination by the learned APP, he submits that it is clear that the mother of the victim wanted to implicate accused in an offence. It is the mother, who reported the incident. She has also further stated that it is her mother, who wanted that the victim leave the house for the reason that she had relations with some other person other than husband. He further submits that there is no medical evidence to support the case of the prosecution. There is no final opinion given by the Medical Officer about forcible sexual intercourse. He has also taken this Court through the evidence of the Medical Officer and the Investigating Officer. From the evidence, it is seen that the victim has further stated in the evidence that statement recorded under Section 164 of CrPC was given as per the instructions of the mother. He submits that at least at the time of recording of evidence in the Court the victim was major and was able to understand everything.

3. Learned advocate for the Respondent No.2 submits that for some reason the victim turned hostile. He submits that in fact the history to the doctor was given by the victim herself. Though

final opinion is not given by the doctor, still her evidence shows that there was history of intercourse. The FIR is in the handwriting of the victim, which strengthens the case of the prosecution. There was independent witness present at the time of giving complaint i.e. person from Child Care Helpline Center. This independent witness also supports the case of the prosecution. The mother of the victim has also fully supported the case of the prosecution. It is natural for any mother to accompany the victim in such situation and to tell the history to the doctor however that does not mean that the complaint is lodged by the mother or it is lodged at the instance of the mother.

4. Learned APP submits that from the FIR, it is seen that at the time of recording of FIR, victim was of 17 years and 5 months. As per her narration, she was raped on many occasions for last two years, which means that she was hardly 15 years and 5 months old when the accused exploited her sexually. She supports the findings recorded by the learned Trial Judge and prays for rejection of the bail.

5. Looking at the material, it is seen that there are statements of the mother and the independent witness, but that needs to be tested in the light of the evidence of the victim, who is not only declared hostile but was cross-examined at length, where she has even stated about the motive behind lodging the complaint. She has also stated that she lodged the FIR as per the instructions of her mother. Assuming that at the time of lodging the complaint, she

was minor, but at least while deposing as witness, she was major and fully aware of the consequences. Then there is situation that this victim herself has turned hostile and has categorically stated that she had not made any complaint or there was no offence committed by the accused.

6. Learned senior advocate Mr. A. S. Khandeparkar submits that though there is allegation that under threat or pressure the victim has deposed against the prosecution, it is submitted that looking at the gap at which she was cross-examined and still there is no allegation that the victim or the mother were pressurized by the accused. It is submitted that the victim's cross-examination was going on from April, 2021 till October, 2021. The mother was examined even thereafter and still there are no complaints of pressurizing witnesses by the accused. This Court certainly finds that a case is made out for grant of bail on certain conditions. Hence, the following order :-

- (i) The application stands allowed.
- (ii) Substantive sentence awarded by the learned Extra Joint District Judge and Additional Sessions Judge, Ratnagiri dated 21.02.2023 in Special Case No.17 of 2020 for the offences punishable under Sections 376 and 506 of IPC and Sections 4 and 8 of POCSO Act stands suspended till the Appeal is heard finally.

- (iii) Applicant/Appellant shall be released on bail on executing PR bond and solvent surety in the sum of Rs.30,000/-.
- (iv) Applicant/Appellant shall not try to contact the victim or any of the witnesses.
- (v) Accused/Appellant shall always keep informed concerned Police Station about his residential address, mobile number etc. and other contact details till final disposal of the Appeal.

7. The Application stands disposed of.

[KISHORE C. SANT, J.]