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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.1897 OF 2023
IN
CRIMINAL APPEAL NO.1055 OF 2022

Kisan Balbhim Devkar : Applicant
Vs.
The State of Maharashtra & Anr. : Respondents

Adv. Laxman Kalel a/w Adv. Nilesh Desai for the Applicant.
Mrs. Manisha A. Devkar (appointed Legal Aid) for Respondent No.2.
Mrs. M. R. Tidke, APP for State.

CORAM : KISHORE C. SANT, J.

DATE : 19th JANUARY, 2024

PC. :

1. Heard the parties for sometime.
2. This Application is for seeking suspension of sentence and release on bail. The Trial Court has held the Applicant guilty for the offences punishable under Sections 363, 376(3) of the Indian Penal Code, under Section 5(1) read with Section 6 of the POCSO. The sentence awarded is 20 years for the offence punishable under Section 376, 5 years for the offence punishable under Section 363 no separate sentence is awarded for the offence punishable under Section 5(1) of the POCSO. The

learned Advocate submits that though the age of victim was only 13 years, however, the sexual relations were consensual and the victim has accepted that she was in love with the accused. He relied upon two orders. One order is passed in Criminal Application (BA) No.718 of 2023. The said order was passed on the Bail Application during the trial and therefore he seeks release of the Applicant. He further relied upon the order passed by this Court dated 2nd August, 2023 on Interim Application No.1510 of 2022 in Criminal Appeal No. 570 of 2022. On going through the order, it is seen that this Court has considered that there was serious doubt about the prosecution case. The Court also noticed that there was animosity between the parties. The Court had doubted the truthfulness of the victim's version and on that premise the Interim Application was allowed.

3. In the present case the learned Advocate for the Respondent No.2 points out that the versions of the victim and her mother are totally relied upon. There is also medical evidence showing victim was subjected to sexual relations. This Court has gone through her statement recorded under Section 164 of the victim and also her deposition. The victim has consistently stated about the incident. Under such circumstances assuming that there was love since the victim was hardly of 11 years of age, this Court finds that no case is made out for grant of bail. The Application is

therefore rejected.

4. The learned Advocate for the Respondent No.2 is appointed through legal aid, she shall be entitled to the fees as per rules.

5. Appeal expedited.

(KISHORE C. SANT, J.)