

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.2707 OF 2023
IN
CRIMINAL APPEAL NO.837 OF 2023

Dharmraj @ Babu Vishnu Deshmukh : Applicants/ Org. Accused
Vs.
The State of Maharashtra & Anr. : Respondents

Adv. Hrishikesh S. Shinde for the Applicant.
Ms. S. Sawant appointed Advocate for Respondent No.2.
Mrs. M. R. Tidke, APP for the State.

CORAM : KISHORE C. SANT, J.

DATE : 16th JANUARY, 2024

PC. :

1. Heard for some time. Appeal is already admitted.
2. It is the case of the prosecution that the present Applicant/Appellant had developed relations with the victim and thereafter also took her at various places and established physical relations with her. At the time of the said incident, the victim was 16 years 5 months old, whereas the Accused/Applicant was major. Therefore offences punishable under Sections 363, 366 & 376 of the Indian Penal Code and Sections 3 &

4 of the POCSO came to be registered against the Applicant/Accused. After trial, the Special Judge held that the prosecution has proved its case and held the accused guilty for the offences punishable under Sections 363, 366 & 376 of the IPC and Sections 3 & 4 of the POCSO. The maximum sentence awarded is 7 years rigorous imprisonment for the offences punishable under Section 3 of the POCSO fine amount is also directed to be paid which is already deposited by the present Applicant. This Court has already admitted the Appeal. After receipt of R & P and the present Interim Application is being taken. It is the case of the Applicant that in fact the relations between the accused and victim were consensual. He invited attention to the evidence of the victim. In her evidence itself, the victim stated that she on her own went with the accused. From Solapur they went to Akkalkot by bus. From Akkalkot they went to Gulbarga by bus and thereafter went to Hyderabad by bus. The incident is alleged to have taken place at Hyderabad. She has also clearly admitted that they were in love relationship. In the cross also she accepted this relationship. Learned advocate thus prays for bail.

3. The learned APP vehemently opposed the Bail Application stating that assuming the relations were consensual, still looking to the age of the victim who was minor at the time of incident, no bail should be

granted. The offence is clearly made out, as consent of minor is of no consequence.

4. Learned Advocate for the Respondent No.2 also opposes the Application stating that when the age is proved by the prosecution by producing on record birth certificate, it is clearly proved that she was minor at the time of the incident.

5. This Court has gone through deposition of the victim. It is seen that she accepted that the victim and the accused were in love. She on her own admits going to various places along with accused. From the cross, it is seen that she had also told accused that she had completed 18 years of age. She specifically accepted that she never made complaint anywhere till returning to Solapur and even thereafter. The complaint was lodged only at the instance of the parents. She had informed her age to be 18 years to the accused. She herself went with the accused to various places. Even after back to Solapur she did not lodge any complaint on her own. Considering all these circumstances and that even the accused was in early twenties of his age and since the maximum sentence is only 7 years, out of which he has already undergone more than 6 months after the judgment, this Court finds that Applicant deserves to grant bail by suspending the sentence. Hence the following order.

ORDER

- a) The substantive sentence awarded by the learned Special Judge, Solapur in Sessions Case No.15 of 2017 (POSCO) dated 9th June, 2023 for the offences punishable under Sections 363 & 366 of IPC and Sections 3 & 4 of the POSCO stands suspended pending the Appeal.
- b) The Applicant shall be released on bail on furnishing PR. bond and solvent surety in the sum of Rs. 30,000/-. The accused shall keep informed the concerned police station about his address and other contact details pending the Appeal.
- c) Applicant shall not try to contact the victim or any other relatives of her.
- d) The learned Advocate for the Respondent No.2 shall be entitled to receive fees as per the rules from the Legal Aid.
- e) Application stands disposed of.

(KISHORE C. SANT, J.)