

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**IN ITS CRIMINAL APPELLATE JURISDICTION****INTERIM APPLICATION NO. 3818 OF 2023****IN****CRIMINAL APPEAL NO. 1182 OF 2023**

Rajesh Jagdish Prasad

: Applicant/Appellant

Vs.

The State Of Maharashtra And Anr.

: Respondents

Adv. Prabhanjay R Dave, a/w Adv. Pradeep P. Kumawat, for the Appellant/
Applicant.

Mrs. M. R. Tidke, APP for State.

Adv. Vishal Jain, for Respondent No. 2, through legal aid.

CORAM : KISHORE C. SANT, J.

DATE : 20th March, 2024**PC.:-**

1. Heard the parties. These Applications are filed for suspension of sentence and release of the Applicant on bail. The Applicant is convicted for the offences punishable under Section 376(1) & 506 of Indian Penal Code and under Section 5(j)(ii) punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 awarded by the Special Judge under POCSO Act, Thane in Special (POCSO) Case No. 301/2018 dated 17.01.2023. The Applicant is directed to undergo R. I. for

10 years and to pay total fine of Rs. 2,000/- in default of payment of fine, further R.I. for one month. In view of Section 42 of the POCSO Act, no separate sentence is awarded for offence under POCSO Act.

2. The learned Advocate for the Applicant vehemently argued that the Applicant has suffered a sentence of more than 5 years and 7 months out of 10 years sentence. He further submits that the prosecution has not produced proof of the age of the victim. Only certificate on record is a school leaving certificate. The Head-Mistress of the school could not provide any information as to on what basis the date of birth came to be registered in the record of the school. He thus submits that the prosecution has failed to prove that the victim was a minor. He further submits that while he was in jail the Applicant has prosecuted the studies and has passed the examination. He has produced on record statement of marks for preparation marathi medium examination held in August-2021 by the Yashwantraon Chavan Maharashtra Open University. The Applicant takes keen interest in the cultural programmes arranged in the jail and is awarded with the certificate for such activity by the Superintendent of Jail. He thus submits that looking to the conduct of Applicant he deserves to be released on bail.

3. Learned Advocate for Respondent No. 2 vehemently opposes

the Applications, he submits that the prosecution has proved the offence beyond reasonable doubt. The school leaving certificate is admissible in evidence in view of Section 12(3) of the Juvenile Justice (care and protection of Children) Rules, 2007. He thus prays for rejection of the Application.

4. Learned APP submits that all the ingredients of the offence under Section 5 of the POCSO Act are proved by the prosecution. The DNA Report of foetus of the victim matches with the DNA of this Applicant. The Applicant was a mature person at the time of commencing the offence, therefore she also opposes the Application.

5. This Court is mainly considering this Application for the reasons that the Applicant has suffer sentence of more than 5 years and 7 months out of 10 years sentence. The Appeal is not likely to be heard in near future since the appeals even prior to this Appeal are still pending for final hearing. The application is therefore allowed. Hence the following Order.

ORDER

- a) Application is allowed.
- b) The sentence awarded by the Special Judge under POCSO Act, Thane in Special (POCSO) Case No. 301/2018

dated 17.01.2023, stands suspended.

c) Applicant shall be released on bail on furnishing P. R.

bond and solvent surety in the sum of Rs. 15,000/-,

d) Applicant shall furnish contact details including his mobile number etc., to the concerned Police Station.

f) Applicant shall keep informed about any change in above mentioned contact details immediately to the concerned Police Station.

6. Interim Application stands disposed of.

(KISHORE C. SANT, J.)

Corrected pursuant to Speaking to Minutes of Order dated 22nd March, 2024.