



Diksha Rane

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

**CRIMINAL APPEAL NO.1003/2023
WITH
INTERIM APPLICATION NO.4223/2023
IN
CRIMINAL APPEAL NO.1003/2023**

PRAMOD MOHAN SURYAWANSHI	..APPLICANT
VS	
STATE OF MAHARASHTRA	..RESPONDENT

Adv. Sushan Mhatre appointed for the appellant.
Smt. S. D. Shinde, APP for the State.
Adv. Priyanka H. Chavan appointed for the victim.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 3, 2024.

ORDER JUDGMENT :

1. Learned APP has placed a communication dated 5/1/2023 addressed by the appellant on record. In the said letter, the appellant has expressed his desire not to prosecute the present appeal as he is not in a financial condition to engage a lawyer and hence, prayed for dismissal of the appeal. It is further stated in the said letter that the sentence imposed by the trial Court is two years rigorous imprisonment of which he has already undergone

more than one year four months and therefore, considering that the appellant is to serve the sentence soon, he does not wish to proceed any further with the appeal.

2. With the assistance of learned APP, I have perused the paper-book. On 20/10/2023, this Court passed the following order:-

“1. This application is filed for suspension of sentence of two years imprisonment imposed on the applicant by learned Additional Sessions Judge, Pune in Special (POCSO) Case No. 321 of 2016, under Section 354 of Indian Penal Code and Section 11(i) punishable under Section 12 of the Protection of Children from Sexual Offences Act, 2012.

2. Maximum sentence imposed on the applicant is of two years. After conviction, trial Court suspended the substantive sentence. Applicant has deposited fine amount. According to the applicant due to covid, he could not file appeal within time. Since the sentence imposed on the applicant is short term, application is allowed in terms of prayer clause (b).

(i) During the pendency of present appeal, substantive sentence of imprisonment imposed upon applicant is suspended.

(ii) Applicant be released on bail on his furnishing PR bond in the sum of Rs.15,000/- with one solvent surety in the like amount.

(iii) Applicant shall attend trial Court once in a month on first Monday.”

3. Despite being enlarged on bail, it seems that the appellant could not avail of the facility of bail as he was not in a position to furnish solvent surety, moreover because of the financial condition he could not avail the services of a lawyer. As on date the appellant has served the sentence of one year, five months and seven days.

4. I, therefore, requested Mr. Sushan Mhatre to appear on behalf of the appellant and assist his Court on the merits of the appeal. In view of the order dated 1/9/2023, I had also requested Advocate Priyanka H. Chavan to appear on behalf of the complainant and assist this Court.

5. With the assistance of learned counsel for the appellant, learned APP for the State and learned counsel for the respondent no.2, I have perused the judgment and order of the trial Court as well as the paper-book. The appellant was prosecuted for the offence punishable under Section 354 of the Indian Penal Code read with Section 11(i) read with Section 12 of the Protection of Children from Sexual Offences Act, 2012.

6. The victim, at the relevant time, was around 16 years of age, a minor. On 20/1/2016, the victim's father made a

phone call to the informant to search for the victim who had left the house. A girl resembling the victim was seen on a motorcycle with one boy proceeding towards 'Ritesh Lodge'. The informant followed the motorcycle and realized that the boy who is the accused and the victim went in a room of the lodge. The victim's father reached the lodge and confronted the accused. On seeing him, the accused fled away. The accused, at the relevant time, was 22 years of age.

7. Learned counsel Mr. Mhatre, assailing the impugned order submitted that the evidence on record would demonstrate that the relationship between the appellant and the victim was consensual in nature. It is further submitted that the victim was of the age of understanding the consequences of the relationship.

8. As indicated earlier, the appellant expressed his desire that he does not wish to prosecute the appeal. The applicant has also undergone one year, five months and seven days sentence as on today including remission. In my opinion, in the facts and circumstances of the present case, considering the age of the appellant and having regard to overall circumstances, in the interest of justice, though the

conviction can be maintained, the sentence is reduced to the one that is already undergone. The appellant may be forthwith set at liberty.

9. I find from the order 20/10/2023 passed by this Court in Interim Application No.2130/2023 that the fine amount has been deposited by the appellant. The fine amount so deposited shall abide by the order that has been passed by the trial Court.

10. The impugned order is interfered with to the limited extent indicated above.

11. This judgment be communicated by learned APP forthwith to the Superintendent/Jailer, Yerwada Central Prison, Pune.

12. Registry is also directed to communicate this judgment to the Superintendent/Jailer, Yerwada Central Prison, Pune.

13. I appreciate the valuable assistance rendered by Advocate Sushan Mhatre, who appeared on behalf of appellant and Advocate Priyanka H. Chavan, who appeared on behalf of the respondent No.2 in this proceeding. Their engagement may be regularized by the Maharashtra State

Legal Services Authority.

14. The appeal is disposed of.

15. The Interim Application is also disposed of.

(M. S. KARNIK, J.)