

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

**INTERIM APPLICATION NO.4658 OF 2023
IN
CRIMINAL APPEAL NO.1390 OF 2023**

Tausif Harun Pathan ..Applicant
Versus
The State of Maharashtra & Anr. ..Respondents

Mr. Akash Giri, Vikas Giri i/by Aslam A. Shaikh, for the Applicant.
Mrs. M. R. Tidke, APP for the Respondent/State.
Ms. Shivani Shinde, for the Respondent No.2.

CORAM : KISHORE C. SANT, J.

DATE : 21st MARCH, 2024

PC.

1. Heard learned counsel for the parties.
2. This Application is filed for suspension of sentence and release of the Applicant on bail, who is convicted by learned Special Judge, Greater Bombay under POCSO Act by judgment and order dated 18.09.2023 in POCSO Case No.261 of 2015. The sentence imposed is as under :-

Sections	Punishment	Fine	Punishment in default of payment of fine
376(2)(n) of IPC	RI for 10 years	Rs.10,000/-	In default of payment of all fine amount, the accused to suffer simple imprisonment for six months.
354 of IPC	RI for 1 year	Rs.5,000/-	
323 of IPC	SI for 2 months	Rs.500/-	
506 of IPC	SI for 6 months	Rs.500/-	

3. It is the case of the prosecution that the victim girl was 17 years of age at the time of incident and the accused 19 years of age came in contact as they were staying in the same locality. They fell in love with each other. The accused proposed for marriage with the victim. Thereafter twice there was physical contact between them. On the date of lodging of the FIR after examination the victim and the accused went to Ghatkopar Railway Station. Accused caught the victim and asked her to accompany him. There some altercation took place. The maternal aunt of the victim came there and she also resisted Applicant. Applicant gave threats even to the maternal aunt of the victim. It is thereafter complaint came to be lodged. The victim herself stated that there was love affair and the accused proposed for the marriage to the girl for which she was not ready. She has not immediately lodged the complaint after having physical relations one month prior to the date of FIR. The doctor who was examined as PW-6 proved the injuries at the time of incident on the date of filing of the FIR. She found bruise on the left side of neck of the victim. Thus, this is *prima-facie* evidence of the doctor. The maternal aunt of the victim also supports the evidence of the prosecution. Learned advocate submits that admittedly, the relationship was consensual. The victim was 17 years of age and the accused was of 19 years of age. Their attraction was purely because of the age. There was no immediate complaint filed by the victim after the physical contact. He relies upon the judgments of this Court in the matter of ***Kailash Raju Parmar Vs. State of Maharashtra***

& Anr. reported in **2020(3) AIR Bom.R. (Cri) 25**, **Savio Alfred D'sa Vs. State of Maharashtra** reported in **MANU/MH/1644/2020** and **Uttam Vitthal Bhosale Vs. State of Maharashtra** reported in **MANU/MH/4638/2017** in support of his case.

4. Learned APP and learned advocate for Respondent No.2 vehemently opposes the Application stating that even if the relations are taken to be consensual, the consent of the victim is of no use as she was child below 18 years. The incident dated 5th March, 2015 is proved. The doctor has also proved the injuries on the victim. The mother and maternal aunt of the victim have deposed in the Court supporting the prosecution case. The maximum sentence awarded is 10 years and there is no case made out to grant bail.

5. This Court *prima-facie* finds that as the physical relation was by consent of the parties and no immediate complaint was filed by the victim, it is clearly seen that there was love affair between the victim and the accused. A case is made out for grant of bail, as the Applicant was on bail during the trail and there is no complaint of misuse of liberty. Even after conviction, he is in jail. The fine amount is already paid. Hence, the following order :-

- i) The Application stands allowed.
- ii) Sentence awarded by learned Special Judge, Greater Bombay under POCSO Act by judgment and order dated 18.09.2023 in POCSO Case No.261 of 2015 stands suspended.

- iii) Applicant is directed to be released on bail on furnishing PR bond and solvent surety in the sum of Rs.15,000/-.
- iv) Applicant shall not contact the victim and shall not enter jurisdiction of the Police Station where the victim is residing or working, except for reporting Police Station.
- v) Applicant shall attend the concerned Police Station once in a month till disposal of the Appeal at a suitable time given by the Police Station. He shall first attend Police Station on 31st March, 2024.
- vi) Applicant shall furnish his contact details including mobile number to the concerned Police Station. If there is any change in the contact details, Applicant shall immediately inform to the concerned Police Station.

6. The Application stands disposed of.

[KISHORE C. SANT, J.]