

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

**INTERIM APPLICATION NO. 4658 OF 2022
IN
CRIMINAL APPEAL (ST) NO. 1307 OF 2022**

Mr. Akash Kanhaiya Lonare

... Applicant
(Orig.Accused)

Vs.

The State of Maharashtra & Anr.

... Respondents
(Orig. Complainant)

Adv. Narayan Gopinath Rokade a/w Adv. Ajinkya Vilas Taskar & Adv.
Udaysinh Deshmukh for the Applicant.
Adv. Komal Sinha (Court appointed counsel from Legal Aid for Victim).
Mr. A. R. Patil, APP for State.

CORAM : KISHORE C. SANT, J.

DATE : 3RD JANUARY, 2024

P.C.:-

1. Heard the parties.
2. This Application is preferred by Accused convicted by the special Court under POCSO Nashik. The present Applicant is held guilty & is convicted for the offenses punishable under Sections 376(2)(n), of the Indian Penal Code and Section 6 read with Section 5 of the Protection of Children from Sexual Offences Act. He is sentenced to suffer rigorous imprisonment for 10 years and to pay fine of Rs.10,000/- in default to

suffer simple imprisonment for a period of one year, no separate sentence is passed under Section 6 read with Section 5 of the POCSO Act. For the offences punishable under Sections 363 he is sentenced to suffer rigorous imprisonment for 2 years and to pay fine of Rs.5,000/- in default to suffer simple imprisonment for a period of three months. For the offence punishable under Section 506 of the Indian Penal code he is sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs. 3,000/- in default to suffer simple imprisonment for a period of three months. All these sentences are to run concurrently.

3. The prosecution in support of its case examined various witnesses including victim. There are two doctors examined by the prosecution PW-7 namely Sonali Gaike and PW-8 Dr. Kalyani Wasudeo. On the basis of this evidence the Trial Court held the Accused person guilty of the offences and has passed this judgment and awarded sentence as stated above.

4. The learned Advocate for the Applicant has vehemently argued that the main ground of the Accused person is that the birth certificate maintained in the Register of Births and Deaths is not properly taken. In year 2015 for the first time the name of the victim was entered in the register and certificate was issued. When the birth was registered in 2004 showing the date of birth as 19th May, 2004 no name of the victim was entered at that time. Though the certificate shows that the name of the

victim is entered on an Application preferred by witnesses. However, the said Application is not produced and proved by the witnesses that is the clerk of the office of Municipal Council Sinnar. He submits that, this is issued under provisions of the Registration of Births & Deaths Act. He further submits that, allegedly the incident has taken place in Surat. However, the panchanama is drawn at Saputara. In support of his submissions, so far as Births, Death and Marriages Registration Act, 1886 is concerned. He relied upon the judgment reported in 2004 SCC OnLine Bombay at page 326, in the case of *Gangadhar s/o Gonduram Tadme Vs. Trimbak s/o Govindrao Akingire and others*. The case of disqualification of public representative on account of acquiring disqualification on the ground of having third child.

5. This Court held that judgment is not applicable in the present case the registration of birth in 2004 child what is challenge only the entry of the name in the birth certificate taken in 2015. As such the age of the victim is not challenged.

6. He further relied upon the judgment by this Court to Criminal Appeal No.393 of 2020. Wherein this Court has considered provisions of Rule 12 of the Juvenile Justice (Care and Protection of Children) Act, 2015. So as to determine the age of child in conflict with law for his child who is victim child. He further relied upon the order passed by the Hon'ble Apex Court in Criminal Appeal No. 2035 of 2022 in respect of the place of

incident this Court finds that this order is also not applicable.

7. While opposing the Application before the learned APP submits that there is clear sufficient evidence is led by the prosecution. She has also stated that, on the earlier occasion he had entered detail his brother of the victim and therefore seen to did not means in words against the Accused. She has also further submitted that victim was taken to various places by the Accused. From the evidence of PW-7 for medical officers it is clearly seen that the victim was sexually assaulted. The documents such as CA report etc., clearly proves the case of the prosecution.

8. Learned Advocate appointed for Respondent No.2 also opposes the bail Application. He submits that the Birth certificate has a presumptive value. In trial the said aspect was not challenge by the Applicant and for the first time he is resent the said ground.

9. Considering this submission, this Court find that it would not be desirable to grant the Application. At the most case of the Accused is that entry taken in the year 2015 is incorrect.

10. The Application therefore stands rejected and is disposed of.

11. The learned Advocate appointed for Respondent No. 2 shall be entitled to receive fee as per rules.

(KISHORE C. SANT, J.)