

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL INTERIM APPLICATION NO. 552 OF 2024****IN****CRIMINAL APPEAL NO. 240 OF 2024**

Sachin Parshuram Pavate

... Applicant

Versus

State of Maharashtra and Anr.

... Respondents

.....

Mr. Anand S. Patil, Advocate for the Applicant

Mr. Shrikant Yadav, APP for Respondent No.1 - State.

Mr. Karan Gajra a/w. Mr. Digvijay Kachare, Ms. Sanchita Sontakke, Mr. Vijay Singh and Daksha P., Advocates for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.**DATED : 10th OCTOBER, 2024.****P.C. :**

1. By this application applicant is seeking suspension of sentence and bail in Special Case No. 46 of 2018.

2. Applicant has been convicted under Section 363, 366, 376(2)(n) of Indian Penal Code (for short "**IPC**") and under Section 4(1) of the Protection of Children from Sexual Offences Act, 2012 (for short "**POCSO Act**") and sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.5,000/- and in default to suffer rigorous imprisonment for three months. The applicant is convicted under Section 366 of IPC and sentenced to undergo rigorous imprisonment for 5 years and to pay a fine of Rs.2,500/- and in default of payment of fine to suffer rigorous

imprisonment for two months. The applicant convicted under Section 363 of IPC and sentenced to undergo rigorous imprisonment for three years and to pay fine of Rs.2,500/- and in default to suffer rigorous imprisonment for two months.

3. It is the prosecution's case that on 15.03.2018 when victim went to college at about 7:30 a.m. applicant met her near college gate and took her at village Valivade by S.T. bus. There he took the victim to the house of his relative. There the applicant threatened the victim by showing knife and he sexually assaulted her. The applicant's relative insisted victim to marry with the applicant but victim refused it. Applicant had taken away mobile of victim and had beaten her. He locked her in one room. He used to beat the victim frequently and not allowing her to go outside. On 03.04.2018, applicant was called by police. Applicant went there with victim. Victim's mother, father and family members were present there. They enquired with the victim, victim told them that applicant sexually assaulted her. Thereafter, victim was sent to Bal Sudhar Gruha and offence was registered against the applicant. After trial applicant is convicted as referred above.

4. It is the contention of the learned counsel for the applicant that at the time of incident victim was more than 17 years old. The physical relations between applicant and victim were consensual. The room where

victim was kept, in the said room six persons were residing. The victim in her cross examination admitted that she used to come outside the said room. Victim was residing with the applicant with her consent. She herself had come with the applicant. Victim was not ready to go with her parents. The investigating officer who has carried out investigation has not been examined. Applicant is behind bar more than one year. During the trial he was on bail. He did not misuse his liberty. Applicant is the karta of his family. It may take time to dispose of the appeal, hence requested to allow the application.

5. It is the contention of learned counsel for the respondent No.1 - State and learned counsel for respondent No.2 that applicant kidnapped the victim from her school. He threatened her by showing knife. He sexually assaulted her on several occasions. He confined her in one room and beaten her. The offence is proved against the applicant. At the time of incident the age of the victim was below 18 years, hence her consent is immaterial. If applicant is released on bail he may abscond. The medical examination of the victim supports the prosecution's case. Considering these facts, both the learned counsel requested for rejection of the application.

6. I have heard all the learned counsel. Perused impugned Judgment and order. It is the prosecution's case that applicant took away the victim

from her school in S.T. bus. Thereafter he sexually assaulted her in the room of his relative by threatening on point of knife. At the time of incident the age of victim was more than 17 years. The victim while doing medical examination has stated to the Medical Officer that she and applicant had performed marriage. It appears from the evidence that she refused to go with the parents when applicant was called at police station. During trial applicant was on bail, he has not misused liberty. He is behind bar more than one year, he is karta of his family. Considering these facts, I am inclined to allow the application and I pass following order.

7. In view of above, the applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of the appeal, on the following terms and conditions :-

ORDER

(i) The applicant be enlarged on bail in Special Case No. 46 of 2018 registered with Karveer Police Station, Kolhapur on furnishing P.R.Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;

8. The Interim Application is allowed in the aforesaid terms and is accordingly disposed of.

9. All concerned to act on the authenticated copy of this order.

(SHIVKUMAR DIGE, J.)