



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO. 993 OF 2023
IN
CRIMINAL APPEAL NO. 610 OF 2023

Akash S/o Devidas Ingle

..VS..

State of Maharashtra through PSO, P.S. Ural, Tq. Balapur, Dist. Akola & Anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A.S. Londhe, Advocate for applicant/appellant.

Mr. H.D. Futane, APP for respondent No.1/State.

Ms. Shubhada Phaltankar, Advocate (appointed) for respondent
No.2.

CORAM : M.W. CHANDWANI, J.

DATED : JANUARY 22, 2024

Heard.

2. The appellant seeks suspension of substantive sentence in Special Case No.52/2020 passed by the Extra Joint District Judge and Additional Sessions Judge, Akola.

3. The appellant has been convicted by the learned Additional Sessions Judge by judgment and order dated 08.06.2022 for the offences punishable under Sections 363 and 366 of the Indian Penal Code (for short 'IPC') and sentenced to suffer rigorous imprisonment for seven years along with fine of Rs.7,000/- in default to suffer simple imprisonment for the period of three months. The appellant is also further convicted for the offences

punishable under Sections 376 of the IPC and Sections 3 and 4 and 5(j)/6 of the Protection of Children from Sexual Offences Act, 2012 (for short the 'POCSO Act') and he was sentenced to suffer ten years rigorous imprisonment along with fine amount of Rs.10,000/- in default to suffer simple imprisonment for the period of six months.

4. The learned Counsel for the appellant invited my attention to the evidence of the victim, who was sixteen years old. He further submits that the marriage proposal was sent twice by appellant to the family of the victim, which came to be rejected. It is also contended that the victim all of way went along with the accused with her own will and they stayed together for some days where the alleged sexual intercourses taken place. Thereafter, when on the death of her father she came back to home, at the instance of family members of the victim, the aforesaid offence has come to be registered. The contention is that the victim was of understanding age, she has not raised alarm while accompanied with the appellant. According to him, there was love affair between the victim and the appellant, the victim willingly eloped with the appellant. The appellant has good case on merit, hence, prayed for suspension of sentence.

5. Per contra, the learned APP vehemently objected the application on the ground that at the time of alleged incident, the victim was minor therefore, consent of the

victim is immaterial hence, sought rejection of the application.

6. I quite see the provisions of POCSO Act wherein the consent of minor is insignificant. But, certainly her consent for offence punishable under Section 363 of the IPC would definitely be significant. Since, she was of understanding age, she could have raised alarm if she was being taken to various places. The record shows that victim resided with appellant for some time.

7. Record shows that there was marriage proposal from the appellant to marry the victim which was refused by the father of the victim. The victim willingly eloped with the appellant. *Prima facie*, a case is made out to give thoughtful consideration to the entire evidence of these facts at the time of hearing of appeal. Considering the pendency, the appeal will take its own time. The appellant has no criminal antecedents coupled with the fact that he has convicted for the fixed term for ten years and the fact that during the trial he was on bail and has not misused the liberty. Hence the following order :

- (i) The Criminal Application is allowed.
- (ii) The execution of sentence imposed upon the appellant on 08.06.2022 by the Additional Sessions Judge (Special Judge) in Special Case No.52/2020 for the offences punishable under Sections 363, 366 and 376 of the Indian Penal

Code as well as Sections 3, 4 and 5(j)/6 of the POCSO Act is hereby suspended till decision of the appeal.

- (iii) The appellant shall pay fine amount imposed by the learned trial Court.
- (iv) The appellant – Akash S/o Devidas Ingle shall be released on bail on furnishing P.R. bond in the sum of Rs.25,000/- with one solvent surety in the like amount.
- (v) The appellant shall remain present before this Court at the time of final hearing of the appeal.
- (vi) The professional fees of the learned appointed Counsel for the respondent No.2 be quantified and paid in accordance with rules.

The application is disposed of accordingly.

(M.W. CHANDWANI, J.)