

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

Interim Application No. 1868 of 2024

in

Criminal Appeal No. 1434 of 2023

Satish Shivaji Chavan

Age 32 years, Occ. Driver,

R/o. Tugaon, Taluka Omarga,

Dist. - Osmanabad.

... Applicant
(Orig. Accused)

versus

1. The State of Maharashtra

(Notice be served upon public

Prosecutor High Court Bombay)

2. XYZ

Age ... years, Occ. Household,

(Notice to be served on Valsang

Police Station District Solapur)

... Respondents

Mr Milind Deshpande, for the Applicant in IA/1868/2024.

Ms Manisha R. Tidke, APP, for respondent / State.

Mr Krishnakant Deshmukh, for respondent No.2.

Coram: R.N. Laddha, J.

Date: 7 January 2025

P.C.:

. Heard. The learned Counsel for the applicant seeks leave to amend the prayer clause. Liberty granted as prayed for. The amendment shall be carried out forthwith.

2. By the present application, the applicant, who has filed an appeal challenging his conviction and the sentence, imposed by the learned Additional Sessions Judge, Solapur, in Special Case No. 153 of 2022, seeks suspension of sentence and prays for his release on bail pending the adjudication of the appeal.

3. The applicant / accused faced trial in Special Case No.153 of 2022 for committing offences punishable under Sections 363, 366-A, 376(2)(i)(n) of the Indian Penal Code and under Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

4. Mr Milind Deshpande, the learned counsel for the applicant; Ms Manisha Tidke, the learned APP for respondent / State; and Mr Krishnakant Deshmukh, the learned counsel for respondent No.2, have taken me through the appeal papers and adverted to the merits of their rival contentions.

5. The learned counsel for the applicant points out the alleged shortcomings in the prosecution's case and argues that the victim did not support their claim. The victim's father categorically stated that at the time of the alleged incident, she was 18 years old. The victim's mother, who allegedly provided the birth date to the school authorities, was not examined. Dr. Sanika Zadbooke, who performed the sonography, stated that

the victim was 21 years old. The victim herself admitted to having a love affair with another person. The procedure required for conducting a DNA test was not followed. The learned counsel further submits that the incident allegedly occurred on 11 February 2021, and the applicant was arrested on 18 April 2022, and has been languishing in jail since then.

6. The learned APP and the learned counsel for respondent No.2, opposed the prayer for bail, emphasizing the gravity of the offence. They contended that the evidence on record, particularly the DNA test, strongly supports the prosecution's case and does not warrant granting bail.

7. This Court has given anxious consideration to the rival contentions and perused the papers. While acknowledging the arguments presented by the learned APP and the learned counsel for respondent No.2 regarding the seriousness of the offence and the current post conviction stage, it is essential to take into consideration that the victim did not support the prosecution's case. The victim's father explicitly admitted that she was 18 years old at the time of the incident, and the mother, who allegedly disclosed the victim's age to school authorities, was not examined. Dr. Sanika, who conducted the victim's sonography, admitted during cross examination that she had no suspicion regarding the victim's age, and the victim

herself stated her age as 21 years.

8. In light of these factors, this Court is inclined to grant relief to the applicant in the following terms:

(i) The sentence imposed upon the applicant vide judgment and order dated 23 October 2023 passed by the Special Judge under Protection of Children from Sexual Offences Act, 2012, Solapur, in Special Case No. 153 of 2022, is suspended during the pendency of the appeal, subject to the applicant executing a P.R. Bond of Rs.25,000/- and furnishing one or more sureties in the like amount.

(ii) The applicant shall keep the Investigating Officer informed and updated about his contact number and address.

(iii) The applicant shall refrain from entering the jurisdiction of the concerned police station where the victim resides and making contact, in any manner, with the victim and her family members.

9. The interim application stands disposed of accordingly.

(R.N. Laddha, J.)