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CRA-4775-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK AGARWAL

&

HON'BLE SHRI JUSTICE RAMKUMAR CHOUBEY

ON THE 15th OF DECEMBER, 2025

CRIMINAL APPEAL No. 4775 of 2024

SAJAN BHATT

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

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Appearance:

Smt. Durgesh Gupta, learned counsel for the appellant.

Shri Ajay Tamrakar, learned Public Prosecutor for the respondent/State.
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JUDGMENT

Per. Justice Vivek Agarwal

Learned counsel for the appellant prays for withdrawal of I.A. No.29511/2025, which is third application for suspension of sentence and grant of bail to appellant.

Accordingly, I.A. No.29511/2025 is dismissed as withdrawn.

This appeal is heard on the request of Smt. Durgesh Gupta, learned counsel for the appellant, as she is aware of the fact that in the case of a minor, consent is immaterial and it is prerogative of the Hon'ble Supreme Court to take a call by exercising its authority under Article 142 of the Constitution of India, therefore, on her request, the matter is taken up for final disposal at motion hearing stage with the consent of Shri Ajay Tamrakar, learned Public Prosecutor.



2. This appeal is filed by the appellant being aggrieved of judgment dated 29/02/2024 passed in Special Case No.34/2023 by learned Special Judge (POSCO Act), 2012 and SC/ST (Prevention of Atrocities) Act, 1989, Narmadapuram (MP) whereby appellant has been convicted and sentenced in the following terms:-

<u>Conviction</u>		<u>Sentence</u>		
<u>Section</u>	<u>Act</u>	<u>Imprisonment</u>	<u>Fine</u>	<u>Imprisonment in lieu of fine</u>
5(1) read with Section 6	POCSO	R.I. for 20 years	Rs.2,000/-	R.I for 02 month
376(2)(n)	IPC	Nil	Nil	Nil

3. Smt. Durgesh Gupta, learned counsel for the appellant, submits that the Coordinate Benches have been granting relief of suspension of sentence even in the case of 14 years old girl whereas in the present case, age of the victim was 17 years, therefore, she was a consenting adult.

4. After going through the record, it is evident that prosecution story, in short, is that on 01/06/2023 victim (PW-3) appeared at Police Station Itarsi and gave a complaint (Ex.P/4) to the effect that she has studied upto 10th class. Her grand-mother is residing at Itarsi, therefore, she is visiting her off and on. For last one year, she became acquainted with the present appellant-Sajan Bhatt and she was visiting his house too. On 14/02/2023 at about 1.00 p.m. Sajan had invited her over lunch and when she reached her house, then she found no other family member was present and Sajan had violated her privacy against her will and had threatened her to kill. Thereafter on three occasions, Sajan Bhatt invited her to his house and violated her privacy.



5. On 31/05/2023 at about 12.30 p.m. Sajan again called her over phone and when she reached there, then she found that since nobody was there, she ran away and reported this matter to her family members including mother and at their encouragement, she came to lodge report.

6. Smt. Durgesh Gupta, learned counsel for the appellant, submits that the victim has performed marriage with the appellant when appellant was on bail during the trial. Out of the wedlock, there is a son born which is being taken care of by the victim. It is also submitted that there is nobody else to take care of the victim as she has been abandoned by her own family. Thus, a mercy plea is raised to show indulgence in the matter.

7. It has come on record that on the basis of the complaint made by the victim, Case Crime No.413/2023 was registered at Police Station, Itarsi, Distt. Narmadapuram, under Sections 376(2)(n), 506 of IPC and under Section 5(1)/6 of POCSO Act so also under Section 3(1)(w)(i), 3(2)(v) of SC/ST (Prevention of Atrocities) Act. Learned trial Court has acquitted the appellant of the charges under Section 506 of IPC so also under the provisions of SC/ST (Prevention of Atrocities) Act.

8. Learned trial Court has convicted the appellant invoking the provisions of Section 42 of the POCSO Act under Section 5(1)/6 of POCSO Act and sentenced to suffer 20 years rigorous imprisonment along with fine of Rs.2,000/- with default stipulation of two months rigorous imprisonment.

9. Shri Ajay Tamrakar, learned Public Prosecutor, submits that the consent of the victim who was, admittedly, a minor at the time of incident, is immaterial. It is no valid consent in the eyes of law. Subsequent event of



performance of marriage and giving birth to a child may be a blissful event for the couple, but, fact of the matter is that unless accused is able to demonstrate that the victim was not a minor at the relevant point of time, no indulgence can be shown in the matter.

10. Having heard learned counsel for the parties and perused the record.

11. Admission register is available on record as proved by Ms.Asha Patel (PW-7). In this admission register (Ex.P/12-C), date of birth of the victim is mentioned as 19/06/2006 and it is further mentioned that she had taken admission in the said school on 17/06/2011 in the first class. Ms.Asha Patel (PW-7), Incharge Headmaster of the concerned school, after mentioning the date of birth etc., in cross-examination, though deposed that surname of the victim and her parents is not mentioned on the register (Ex.P/13) and also admitted that there is no document on the record to show that any birth certificate etc was taken at the time of admission in support of the date of birth, but, except for this, her evidence in regard to date of birth of the victim to be 19/06/2006 has remained unrebutted.

12. As far as mother of the victim is concerned, she has been examined as PW-1 before the learned trial Court. This witness deposed that date of birth of the victim is of the year 2006. This witness admitted that she does not remember the date of birth of the victim. However, in cross-examination, this witness deposed that the age of her elder son, on the date of deposition, was 20-21 years. She got the victim admitted in the school. Birth certificate of the victim was prepared at Municipal Council, Itarsi and



her husband was instrumental in getting it prepared. This witness (PW-1) further deposed that victim is 2-3 years younger to her elder son. This witness admitted that her husband had not accompanied her at the time of admission of the victim to the school.

13. Sister of the victim (PW-2) deposed that her date of birth is of July, 2007 and the victim is one year elder to her. Thus, PW-2 has corroborated the year of birth as 2006. Birth certificate of the victim is available on record as Ex.P/14 as narrated by Ms. Asha Patel (PW-7), school teacher of the victim, and this reveals date of birth of the victim to be 19/06/2006. Date of registration of date of birth is 20/06/2006, therefore, this certificate (Ex.P/14) is material to determine the age of the victim in terms of the provisions contained in Section 94 of the J.J. Act.

14. Dr. Vedehi Malviya (PW-9) admitted that she had not prescribed ossification test, but Police had shown her 10th class mark sheet in regard to age of the victim and on that basis, she had mentioned age of the victim on the MLC sheet (Ex.P/17) as 17 years.

15. When these facts are taken into consideration, then as per the definition of child given under the POCSO Act, 2012, Section 2(d) defines "child" means any person below the age of eighteen years. Since victim was below the age of eighteen years, therefore, she will be covered under the definition of "child". Section 5(l) of the POCSO Act deals with penetrative sexual assault on child more than once or repeatedly. As per the written complaint of the victim (Ex.P/4), she was victim of repeatedly penetrative sexual assault, therefore, in our opinion, subsequent event of marriage during



bail or birth of a child out of the said wedlock, are immaterial to show indulgence in terms of the provisions contained in the POCSO Act.

16. At this stage, Smt. Durgesh Gupta, learned counsel for the appellant, places reliance on the judgments of the Hon'ble Supreme Court in the cases of **In Re : Right to Privacy of Adolescents with Criminal Appeal No.1451 of 2024**, **Suo Moto Writ Petition (C) No.3 of 2023** and **Criminal Appeal No.1451 of 2024**, **Criminal Appeal No.679/2024 (K.Kirubakaran Vs. State of Tamil Nadu)** and **Criminal Appeal No.796 of 2022 [(@ Special Leave Petition (Crl.)No.9698/2019] (K. Dhandapani Vs. The State by the Inspector of Police).**

17. However, we are of the opinion that since in all these three judgments, Hon'ble Supreme Court has shown indulgence exercising its authority under Article 142 of the Constitution of India and that authority being not available to the High Court, we refuse to show indulgence in the matter.

18. Accordingly, this appeal fails and the same is hereby dismissed.

(VIVEK AGARWAL)
JUDGE

(RAMKUMAR CHOUBEY)
JUDGE

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