

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.419 OF 2015
IN
CRIMINAL APPEAL NO.400 OF 2015

Mohd. Usman Ismail Khan

..Applicant

Versus

The State of Maharashtra

..Respondent

....

Mr. Lahu Gaikwad, for the Applicant.

Mrs. P.P. Bhosale, APP, for the State.

....

CORAM : A. R. JOSHI, J.

DATE : 7th AUGUST, 2015

P.C.

1. Heard rival arguments on this application for grant of bail during pendency of appeal. The appeal is already admitted.
2. The appellant is convicted for the offence punishable under Section 363 of IPC and Section 4 of the Protection of Children from Sexual Offences Act and was respectively sentenced to suffer RI for five years and seven years.
3. The case of the prosecution is that on the relevant day at 4:30 pm in the shop of the present applicant / appellant an

unnatural act was committed with respect to the small boy aged about 10 years. The offence was in fact of having unnatural sexual intercourse with the boy by the applicant. The complaint was lodged by the maternal aunt of the boy. Apparently, the present applicant was unknown to the boy.

4. During recording of evidence before the Court, the victim boy did not identify the present applicant initially and stated that he was not the person who committed the offence and it was committed by some other boy who gave ice-cream to said victim boy and took him in one shop and committed unnatural act. During the cross-examination the victim boy also admitted that there was some quarrel between his maternal aunt who had lodged the complaint and the mother of the applicant. Apparently, it was brought on record that there was some enmity between the applicant and the complainant woman. Admittedly no test-identification parade was conducted. History recorded by the attending doctors at Nagpada hospital and also at Rajawadi hospital indicate that unnatural assault by unknown person. Medical report shows that the injuries to anus of the small boy were external and

there was no CA report regarding grouping of the blood found on the clothes of the boy.

5. Considering these main circumstances and the substantive evidence of the victim boy himself, in the opinion of this Court the present applicant / appellant can be released on bail during pendency of appeal as there are no immediate prospects of taking up appeal for final hearing. As such, application is allowed. The applicant be released on bail in the sum of Rs.20,000/- (Rupees Twenty Thousand Only) with one or two sureties for the like amount. Bail procedure to be taken before the trial Court. At the time of availing the bail, the applicant shall give his detailed contact address and telephone number to the concerned police station so that his whereabouts can be found when the appeal will be put to final hearing. Application is accordingly disposed of.

(A. R. JOSHI, J.)

Deshmane (PS)