

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.1604 OF 2014
IN
CRIMINAL APPEAL NO.936 OF 2014**

Imran Shamim Khan .. Applicant
Versus
The State of Maharashtra .. Respondent

Mr.Aniket Vagal, Advocate for the applicant.

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

CORAM : PN. DESHMUKH, J

DATED : 18th AUGUST 2016

P.C. :

1 Heard learned counsel for both the sides.

2 This is an application for suspension of substantive sentence imposed upon applicant and for release on bail, pending Appeal.

3 Applicant is found to have been convicted for the offence punishable under section 6 of Protection of Children from Sexual Offences Act, 2012, and is sentenced to suffer RI for 10 years and to pay fine of Rs.2,000/- in default to suffer SI for 15 days. Applicant is further found convicted for the offence punishable u/s/506(II) of IPC, and is sentenced to suffer RI for

one year and to pay fine of Rs.500/- in default to suffer SI for 7 days.

4 Learned counsel for the applicant had invited my attention to evidence of prosecutrix as well as that of complainant and medical evidence and on the basis of said evidence, submitted that since the prosecutrix as well as complainant has not supported the case of prosecution, since turned hostile, and as there is no medical evidence on record establishing sexual assault upon the minor girl, application is liable to be allowed.

5 Learned APP, on the other hand, has referred to the observation of the learned Special Court in paragraph no.13 of the judgment, and has submitted that considering the age of prosecutrix who is minor, there is every possibility of her being tutored and has further contended that in fact, from the evidence of learned Metropolitan Magistrate who has recorded statement of prosecutrix under Section 164 of the Code of Criminal Procedure, applicant's involvement is established and has thus opposed for grant of bail.

6 Perused the evidence of prosecutrix who has not supported the case of prosecution and to the specific question put to her in Question and Answers form, had denied saying that she does not remember if she knows the accused, or if she calls him as “*chacha*” or if she was taken to hospital or even if she was examined by Doctor. According to prosecutrix, she knows applicant as residing nearby her house. She is not even aware as to what has happened to her. In the latter part of her cross-

examination, prosecutrix had denied the entire case of prosecution, saying that she does not know anything. Prosecutrix has even failed to identify the applicant on being confronted with him by video-conferencing, except for saying that the persons shown reside at a far distance from her house.

7 Similarly, though it appears to be the case of prosecution that incident has occurred in the house of prosecutrix, the question put to prosecutrix in her cross-examination to the effect that whether applicant was visiting her house, is replied by her in negative.

8 It is also found that complainant, who is grandmother of prosecutrix, has also not supported the case of prosecution.

9 Moreover, according to the medical papers, prosecutrix is found examined on 20th July 2013 i.e. one day after the alleged incident and has stated history of sexual assault by known person living in the same house 8 days back, on two occasions.

10 In view of history, as aforesaid stated by prosecutrix, case of prosecution does not appear to be truthful. Moreover, there is no specific opinion with reference to sexual assault, if any, upon prosecutrix as what is opined is that no definite opinion can be given if prosecutrix was subjected to intercourse.

11 Having considering facts as aforesaid, applicant is entitled for release on bail, pending Appeal, as per order below.

O R D E R

(i) Applicant shall be released on bail on his furnishing PR. Bond in the sum of Rs.25,000/- with one surety in like amount, or two sureties in the sum of Rs.12,500/- each to make up the amount.

(ii) Applicant, while on bail, shall not indulge in any criminal activities, and shall mark his presence with Shivaji Nagar Police Station on 15th day of alternate months from 15th September 2016 onwards, till further order.

(PN. DESHMUKH, J)