

**CRIMINAL APPLICATION NO.41 OF 2017
IN
CRIMINAL APPEAL (ST)NO.23 OF 2017**

Vicky @ Iyob Vishwanath Shrisundar	...	Applicant
V/s.		
The State of Maharashtra	...	Respondent

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Mr.Indrajeet Joshi, Advocate for the Applicant.
Mr.S.V.Gavand, APP for the Respondent/State.

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CORAM : A. M. BADAR J.

DATED : 17th JANUARY 2017.

P.C . :

1 This is an application for suspension of sentence and releasing the applicant/accused during pendency of the appeal. The applicant/accused has been convicted of offence punishable under Sections 363 and 376 of the Indian Penal Code (“the IPC” for the sake of brevity) as well as Section 4 of the Protection of Children from Sexual Offences Act, 2012. He is sentenced to suffer rigorous imprisonment for seven years apart from payment of fine of Rs.5,000/- for the offence punishable under Section 363 of the IPC. For offence punishable under Section 376 of the IPC,

he is sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs.20,000/-. For the offence punishable under Section 4 of the POCSO Act, the applicant/accused is sentenced to suffer rigorous imprisonment for ten years apart from payment of fine of Rs.20,000/-. Substantive sentences are directed to run concurrently.

2 Heard the learned counsel appearing for the accused at sufficient length of time. He argued that the evidence adduced by the prosecution is discrepant and P.W.No.4 Sanjay Jaiswal, who claims to have seen the applicant/accused bringing back the victim has not identified the applicant/accused while in the dock. The learned counsel further argued that the applicant/accused was shown to all witnesses including the victim in the police station itself. The learned counsel further argued that though the incident has allegedly taken place in a big complex, no independent witness are examined by the prosecution. The DNA report came after a lapse of one and half year. With this, the learned counsel for the applicant/accused argued that as the applicant/accused has undergone four and half years of sentence, he is entitled to be released on bail during pendency of appeal.

3 The allegations against the applicant/accused are to the effect that he had committed rape of a female child of about 8 years of age. The learned trial Court has accepted the version of

the minor female victim of the crime in question. While convicting the applicant/accused of the alleged offence, the learned trial Court also considered medial evidence which come on record through evidence of P.W.No.13 Dr.Amarsingh Rathod apart from forensic evidence. *Prima facie* I am unable to accept the contention of the learned counsel for the applicant/accused that it was wrong to show applicant/accused in the police station. Ultimately, it was for guiding the investigator whether he was proceeding in the right direction or not. The ultimate aim of the test identification parade is also the same. What is substantial evidence is identification in the dock. Though P.W.No.4 Sanjay Jaiswal might not have identified the applicant/accused, but the victim of the crime has categorically identified the applicant/accused as preparator of the crime. Her version is gaining corroboration from several sources.

4 In the matter of ***Radhu v. State of Madhya Pradesh*** 2007 Cr.L.J. 4704, it is observed by the Honourable Apex Court that in order to record finding of guilt in case of rape even uncorroborated evidence of victim of the crime can be accepted, as the very nature of the offence makes it difficult to have independent witnesses for corroborating the evidence of the victim. Broader probability are required to be kept in mind by ignoring the minor discrepancies.

5 Considering the nature of crime and the *prima facie* evidence available on record, the application deserves to be rejected. Therefore, the order :

i) The application is rejected.

 The appeal be fixed for final hearing in the category of jail appeals.

(A. M. BADAR J.)