

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.326 OF 2017
IN
CRIMINAL APPEAL NO.165 OF 2017**

**Jishan @ Pappu Nisar
Ahemad Siddiquee**

)...Appellant/Applicant

V/s.

State Of Maharashtra

)...Respondent

Ms. Pracheta Rathod i/by Anjali Patil, Advocates for the Appellant/Applicant.

Mr. S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 17th April, 2017.

P.C. :

This is an application for suspension of sentence and releasing the applicant/accused on bail during the pendency of the appeal filed by him before this Court.

2 The applicant/accused has been convicted of the offences punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (For the sake of brevity 'POCSO Act, 2012') and he has been sentenced to suffer rigorous

imprisonment for 10 years apart from directing him to pay fine of Rs.40,000/- and in default to undergo further rigorous imprisonment for a period of three months.

3 Heard the learned advocate appearing for the applicant-accused. She argued that the applicant is a young person aged about 20 years and there is no likelihood of deciding the appeal in near future. She further argued that medical evidence is not supporting the case of the prosecution and evidence of P.W.6-Dr. Sandip Pophale shows that upon examination of the victim female child, he found that her hymen is intact and there was no evidence of tear, inflammation or redness in the genital area, therefore, according to the learned advocate appearing for the applicant-accused, the offence of penetrative sexual assault is not made out by the prosecution and, therefore, the applicant-accused is entitled for release on bail.

4 The learned APP opposed the application by contending that medical evidence adduced by the prosecution by itself demonstrates penetrative sexual assault and, therefore, the applicant-accused is not entitled for bail.

5 I have carefully considered the rival submissions and also perused the copies of deposition so also the impugned judgment and order. P.W.1-is the female victim child who was allegedly subjected to penetrative sexual assault by the applicant-accused. She was below 5 years of age at the time of incident in question. She had deposed about penetrative sexual assault on her by the applicant-accused. In her medical examination, as contended by the learned advocate for the applicant-accused, hymen of the minor female victim was found intact and, there was no evidence regarding tear, inflammation as well as redness in the genital area. However, as seen from the evidence of the P.W.6-Dr. Sandip Pophale as well as contemporaneous medical record, vaginal swabs, anal swabs and buccal swabs were taken during the course of medical examination of the minor female victim. Those were subjected to forensic examination. It is seen from the evidence of P.W.6-Dr. Sandip Pophale that stains of semen were detected on undergarments of the minor female victim as well as on collected swabs. The DNA report shows that semen detected on anal swab of minor female victim apart from her nicker were

found to be semen of the applicant-accused. In this view of the matter, at this stage, it is not possible to conclude that there was no penetrative sexual assault much less aggravated penetrative sexual assault on the minor female victim of the crime in question.

6 Considering the nature of the crime in question as well as the circumstances in which it is committed, no case for suspension of sentence is made out and, therefore, the order:

- (1) The application is rejected.
- (2) However, hearing of the appeal is expedited in the category.

(A. M. BADAR, J.)