

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.396 OF 2017
IN
CRIMINAL APPEAL NO.195 OF 2016**

Siddarth Dagadu Sonde)...Applicant

**V/s.
State Of Maharashtra**)...Respondent

Mr. Ashok Toraskar, Advocate for the Applicant.

Mr. P.H.Gaikwad-Patil, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 21st MARCH, 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, which is already admitted for final hearing. The applicant-accused has been convicted of the offence punishable under Sections 376 and 354 of IPC as well as under Section 4 of the Protection of Children from Sexual Offences, Act, 2012 (For the sake of brevity '**POCSO Act, 2012**') by the learned trial Court. For the offence punishable under Section 376 of IPC

and under Section 4 of the POCSO Act, 2012, the applicant-accused has been sentenced to suffer RI for 10 years on each count and for the offence punishable under Section 354 of IPC, he is sentenced to suffer RI for one year.

2 Heard the learned Advocate appearing for the Applicant-Accused. By taking me through the impugned judgment and order of conviction and sentence, the learned Advocate appearing for the Applicant-Accused argued that victim girl, according to the prosecution case, was staying with the applicant-accused from January, 2012 and they all had been to her house in the month of May, 2013 for fare of Mhasoba God. Then victim girl refused to accompany with the applicant-accused. With this factual aspects of the matter, the learned Advocate for the applicant-accused argued that there is inordinate delay in lodging FIR against the applicant-accused. The learned Advocate further argued that for a period of about one year, the alleged victim of the crime in question was frequently visiting house of her mother, however, for a period of about one year, she has not disclosed anything to her mother. The learned advocate further argued that

medical evidence adduced by the prosecution is not supporting the case of the prosecution as P.W.4-attending medical officer has not firmly opined that victim came to be raped by the applicant-accused. The learned Advocate by pointing out spot of incident argued that terrace is not safe place to commit such offence. It is further argued that grand mother of the victim girl cannot be considered as disinterested witness and, therefore, evidence adduced by the prosecution is coming on record from the mouth of interested witness. With this, he prayed for suspension of sentence and releasing the applicant-accused on bail.

3 The learned APP opposed the application.

4 It is the case of the prosecution that victim girl child was taking education in 7th standard at the time of incident in question. Initially, she was staying with her mother Suman informant P.W.1 at Dattawadi Mhasoba Chowk, Pune. After death of her father, the victim girl child was taken by the applicant-accused to his house for the purpose of her education. The applicant-accused is husband of sister of the deceased father of the victim girl child. Then victim girl child started residing with the

applicant-accused and his wife at Jaiprakash Nagar, Yerwada, Pune. She was admitted to 7th standard at Netaji Subhashchandra High School.

5 After examination of the victim girl child, she was brought back to the house of the informant mother Suman. Then she refused to go back to the house of the applicant-accused for undergoing further education. Upon being asked, she disclosed the incident of her molestation to her mother informant PW.1-Suman. Subsequently, report came to be lodged by mother of the victim girl child.

6 Prima-facie from the evidence adduced from the victim girl child and other prosecution witnesses, victim girl child is concluded to be aged 12 years and 3 months by the learned trial Court. As per the provisions of POCSO Act, 2012, a victim child below 18 years of age is considered as child and as such, provisions of POCSO Act, 2012 are applicable.

7 There is delay in lodging FIR by mother of the victim girl child. The applicant-accused is nearest relative of the victim girl child. Offence alleged is that of penetrative sexual assault or

rape on her by her nearest relative in whose house she was staying for undertaking school education for about a year. It is a matter of common knowledge and judicially noted fact that the incident like rape more so when perpetrator of the crime happens to be member of the family or related therewith involves honour of the family and as such, there is reluctance on the part of the family as well as the victim to report such incident. In this view of the matter, delay in lodging FIR cannot be used as ritualistic formulae to discard the case of the prosecution.

8 It is seen that victim girl child has categorically deposed about penetrative sexual assault on her by the applicant-accused frequently by taking her to the terrace of the house of the applicant-accused. Terrace of the house may not be safe place to commit such offence but ultimately that is not relevant when evidence of the victim girl child is pointing out repeated penetrative sexual assault on her by the applicant-accused. It is seen from the impugned judgment and order that attending medical officer upon medical examination of the victim girl child has noticed that her hymen was torn and there were old hymenal

tears at 8 and 10 o' Clock position. This reflects penovaginal intercourse and as such, medical evidence supports version of the prosecutrix. Apart from this, other evidence is also corroborating version of the prosecutrix. At this juncture, it is apposite to note that in the matter of **Bharwada Bhoginbhai Hirjibhai v. State of Gujarat** reported in **AIR 1983 SC 753**, the Hon'ble Apex Court has held that in the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Similar is the ratio of the Hon'ble Apex Court in **Radhu v. State of Madhya Pradesh** reported in **2007 Cr.L.J.704**.

9 In this view of the matter, no case for grant of bail is made out. Application is rejected.

(A. M. BADAR, J.)