

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO. 1195 OF 2016
IN
CRIMINAL APPEAL NO. 644 OF 2016**

Ravi Veladedu Kharad @ K.V. RaviApplicant
Versus
The State of MaharashtraRespondent

Mr. Shailesh Kantharia with Sharad Ghadge I/b. S.M. Gaonkar &
Associates for the applicant.

Mrs. S.S. Kaushik, APP for the State.

Mr. Mahesh M. Patankar, API present in Court.

***CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATE : 28th NOVEMBER, 2017***

P.C. :

1. The applicant was an accused in Sessions Case No. 983 of 2013 on the file of Special Judge, Greater Bombay. By this application, the applicant has sought suspension of execution of substantive sentence imposed vide judgment dated 14th July, 2016 and has prayed for release on bail.

2. Heard Mr. Shailesh Kantharia, learned counsel for the applicant and Mrs. S.S. Kaushik, learned APP for the State. Perused the records and considered the submissions advanced by the learned counsels for the respective parties.

3. The applicant was convicted for offence punishable under Section 6 of Protection of Children from Sexual offences (POCSO) Act, 2012 and sentenced to undergo rigorous imprisonment for ten years and to pay fine of Rs.2,000/- in default to suffer simple imprisonment for one month. The applicant is also convicted for offence punishable under Section 506 (II) of the Indian Penal Code and sentenced to suffer rigorous imprisonment for one year and to pay fine of Rs.500/- in default to suffer simple imprisonment for seven days. Substantial sentences are ordered to run concurrently. The learned Judge, after considering the evidence on record, has convicted and sentenced the applicant as stated above.

4. The record reveals that the victim girl is a 'child' within the meaning of section 2(d) of the Protection of Children from Sexual Offences (POCSO) Act, 2012. She is an orphan, her parents having died due to HIV Aids. The victim girl is also suffering from HIV Aids. Her testimony *prima facie* reveals that her grandmother was not ready to keep her since she is suffering from HIV Aids. She, therefore, went to her paternal uncle and asked whether she could stay with him. Her paternal uncle advised her to stay with paternal aunt and since June, 2012, she was residing with her paternal aunt at her residence at Bhandup. The applicant herein is the husband of the paternal aunt of the victim.

5. The testimony of the victim girl reveals that the applicant herein had committed rape on her several times. She did not disclose the

incident to anyone as she had no other person to take care of her. She had further stated that on 25th July, 2013, when she had been to Sion Hospital for her regular treatment for HIV Aids, she had disclosed the incident to Dr. Dipti More-PW4. Dr. Dipti More in turn narrated the incident to Dr. Sushil and Dr. Yashwant. Dr. Yashwant took her to gynaecologist. Dr. Prakash examined her and told her aunt about her condition but however, her aunt refused to come to the hospital. Furthermore, when paternal aunt of the victim came to know about the incident, she told her brother to take the victim back. She had further stated that the Child-line had come to know about the said incident. They brought her to Mumbai and thereafter a complaint was lodged against the applicant.

6. The testimony of the victim girl *prima facie* reveals that the applicant who is the husband of her paternal aunt had committed rape on her several times.

7. The evidence of Dr. Dipti More-PW4 *prima facie* reveals that she is working as Research Officer at Paediatrics Centre, Sion Hospital. She had stated that the victim who is a HIV patient used to come to the said centre for treatment. She had stated that the victim had told her that the applicant herein had sexual intercourse with her. She had advised the victim to lodge a report but the victim was not ready and was scared and tensed.

8. Similarly, the evidence of PW5-Dr. Manali Lilani also reveals that she was treating the victim who is suffering from HIV Aids. This

witness had stated that on 25th July, 2013, Dr. Dipti had narrated that the victim had disclosed that she was sexually abused by the applicant.

9. The testimony of PW6-Dr. Baban Shinde reveals that he had examined the victim. His testimony *prima facie* reveals that hymen of the victim was torn at 3, 6, 9, 11 o'clock position. He had also examined the applicant and had opined that there was nothing to suggest that the applicant is impotent.

10. Thus, the evidence of these witnesses corroborates the testimony of the victim. The evidence on record *prima facie* reveals that the applicant had committed rape on a minor girl. The offence is of grave nature. Considering the nature of the offence, in my considered view, this is not a fit case to release the applicant on bail and/or to suspend the execution of substantive sentence. Hence, the application is dismissed.

11. At this stage, the learned counsel for the applicant prays that the hearing of the appeal be expedited. The appeal is of the year 2016. Several appeals prior to 2016 where the accused are in jail, are pending for hearing. No case is made out for expediting the appeal. Hence the request is rejected.

(SMT. ANUJA PRABHUDESSAI, J.)