

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

CRIMINAL APPLICATION NO.1652 OF 2017

IN

CRIMINAL APPEAL NO.1008 of 2017

Dasa Bhimrao Chaudhari ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Saurabh Patil a/w Nitesh Bhutekar for the applicant.

Mr. Y.M.Nakhwa, APP for the State

CORAM: A.M. BADAR, J.
DATED: 15th DECEMBER 2017

PC:-

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

2. The applicant/accused is convicted of offences punishable under Sections 354, 354(A)(1)(i) of the Indian

Penal Code as well as under Sections 4 and 8 of the Protection of Children From Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO' for the sake of brevity). He is sentenced to suffer Simple Imprisonment for 7 years apart from payment of fine of Rs.1,000/- for the offence punishable under Section 4 of the POCSO Act and for the offence punishable under Section 8 thereof he is sentenced to suffer Simple Imprisonment for three years apart from payment of fine of Rs.1,000/-. No separate sentence were imposed on the applicant/accused for other offences.

3. Heard the learned Advocate appearing for the applicant/accused. He drew my attention to the litigation between the prosecuting party and the accused and contended that both the parties were on inimical terms. He drew my attention to the Petition under Section 161 of the Motor Vehicles Act filed before the Member, Motor Accident Tribunal, Pune and argued that as seen from cross-examination of PW-1 Anita there was dispute regarding share

in the amount of compensation payable on account of death of her mother-in-law. Therefore, the applicant is falsely implicated in the crime in question. He further argued that as the applicant is 75 years old. He be released on bail.

4. The learned Additional Public Prosecutor appearing for the respondent/State opposed the application by pointing out evidence of victim child as well as that of PW-3 Dr. Ratnamala.

5. I have carefully considered the rival submissions and also perused the evidence on record. The victim child is aged about 6 years and at the relevant time she was taking education in the 1st standard. She deposed that the applicant/accused removed her nicker, applied oil on her vagina and touched her vagina by fingering.

6. PW-1 Anita is mother of the victim child. She has disclosed the recitals of minor female daughter which are in

tune with deposition of the minor female child.

7. Soon after the incident, the minor female child was subjected to the medical examination at the government hospital, Pune. PW-3 Dr. Ratnamala had examined minor female Child. She deposed that on clinically examination, she found that there was perhymenal abrasion between 9 'O' clock and 10 'O'clock position of size 0.5 x 1 cm. It was red in colour. The medical officer found second perhymenal abrasion on the private part of the minor female child and it was at 3 'O' clock and 4 'O' clock position with size 0.8 x 0.3 c.m. This injury was also red in colour. Upon clinical examination of the minor female child, the Medical Officer opined that there is evidence of fingering in the genital region as well as genital handling of the minor female child.

8. After due trial, the applicant/accused is found guilty of the offence of penetrative sexual assault on a minor female child of 6 years of age. The mental and psychological trauma

of such sexual assault troubles the minor female child throughout her life resulting in depression, anxiety and post traumatic stress disorder. Such sex abuse is a particular sinister type of trauma because of the shame it instills in the victim, which lasts throughout the life. Therefore, the fact that he was on bail through out the trial pales into insignificance. Age of the applicant is also becomes irrelevant.

As such the following order:-

- i) Application is rejected.
- ii) Hearing of the appeal is expedited.

(A.M. BADAR, J)