

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.1057 OF 2018**

**IN**

**CRIMINAL APPEAL NO.849 OF 2018**

Mr.Avinash Navnath Lakade ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

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Mr.Dilip Bodake with Mr.Ganesh S. Shelar, Advocate for the Applicant.

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

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**CORAM : A.M.BADAR J.**

**DATED : 27<sup>th</sup> AUGUST 2018.**

**P.C. :**

1            This is an application for enlargement on bail moved by the applicant/accused, who has been convicted of offences punishable under Section 7 read with Section 8 the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO' for the sake of brevity) under Section 5(l)(m) read with Section 6, as well as under Section 3 read with Section 4 of the POCSO. On these three counts, the applicant/accused is sentenced to suffer rigorous imprisonment for three years, ten

years and seven years respectively apart from payment of fine of Rs.10,000/- and default sentence of simple imprisonment for one year. The substantive sentences are directed to run concurrently.

2            Heard the learned Counsel appearing for the applicant/accused at sufficient length of time. He took me through the entire evidence adduced by the prosecution and submitted that evidence of the victim child is not corroborated by the medical evidence. It is further argued that evidence of the First Informant goes to show that though she came to know about the alleged incident on 27/03/2016, there is delay of three days in lodging the report. The learned Counsel further argued that evidence of the P.W.No.1 suffers from omissions. Evidence of the prosecution further shows that the victim child was initially taken to Dr.Kulkarni, who has not been examined by the prosecution. Similarly, the prosecution has not examined the persons, who were present in the meeting held after the incident. The neighbourers of the applicant and the victim child were not examined. The applicant/accused was on bail during pendency of the trial and he has not misused the liberty granted to him. It is further argued that the applicant/accused is a student and, therefore, he is entitled to be released on bail.

3            The learned Additional Public Prosecutor opposed the application by contending that the learned trial Court has found

the victim child as a witness of truth. My attention is also drawn to the evidence of victim child as well as her mother.

4 I have carefully considered the rival submissions and also perused the copies of depositions of prosecution witnesses and the impugned Judgment and Order of conviction and resultant sentence.

5 So far as alleged delay in lodging the FIR is concerned, the First Informant/mother i.e. P.W.No.1 has candidly deposed that her husband used to work at Mumbai and he used to visit them at village Pimpri in Satara District occasionally. She deposed that after hearing recitals of her daughter, she went into shock and, therefore, there is delay of two or three days in approaching police. Victim of the crime in question is examined as P.W.No.2. She, at the relevant time, was ten years old. She has stated that the applicant/accused, who was her neighbour, used to visit her house, when she used to be all alone in the house and then the applicant/accused used to indulge in penetrative sexual assault on her by inserting his private part into her vagina as well as anus. PW..No.3 Dr.Pradnya Bhosale is the Medical officer, working at Civil Hospital, Satara. She deposed that she found hymen of the victim child intact, but further stated that the penetration did not reach up to the hymen and, therefore, the hymen is intact. This Medical Officer, further deposed that she

observed that the victim is habitual to the activity. There is virtually no cross-examination on this aspect.

6           It is thus seen from the evidence that evidence of the victim child is corroborated in material particulars by her mother i.e. P.W.No.1 and by the medical evidence adduced by the prosecution on record.

7           It is not at all necessary for the prosecution to examine as many as witnesses as are available for proving the offence. If available evidence is found to be discrepant, then only non-examination of other witnesses, who are available, assumes important.

8           Considering the nature of offence and the fact that on trial, the same is held to be proved, the fact that the applicant/accused was on bail during pendency of the trial pales into insignificance. Hence, the Order :

ORDER

- (i) The application is rejected.
- (ii) The application is disposed of accordingly.
- (iii) Hearing of the appeal is expedited in the category.

**(A.M.BADAR J.)**