

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1150 OF 2017

IN

CRIMINAL APPEAL NO. 908 OF 2017

SHAKIB SHAHAJAN SHAIKH

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Mr.Anil Joshi, Advocate for the Applicant.

Mr.Prashant Jadhav, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 14th FEBRUARY 2018

P.C. :

1 This is an application for suspension of sentence and releasing the applicant/accused on bail during pendency of the appeal filed by him. The prayer also indicates that stay to the impugned judgment and order is sought.

2 The applicant/accused is convicted for offences punishable under Section 376 and 354 of the Indian Penal Code apart from the offence punishable under Section 3 read with 4 and 5(1)(m) read with 6 of the Protection of Children from Sexual Offences Act, 2012. Different sentences are given on different counts but substantive sentences are directed to run concurrently. The maximum thereof is 10 years for the offence punishable under Section 376 of the Indian Penal Code and for the offence punishable under Sections 5(1)(m) read with 6 of the Protection of Children from Sexual Offences Act, 2012.

3 Heard the learned advocate appearing for the applicant/accused. He drew my attention to the evidence of PW1 Apruja Patel – mother of the alleged victim and submitted that the spot of the incident disclosed by this witness is a room at the third floor, whereas PW3 – who is alleged victim of the crime in question, has stated this spot as terrace of the apartment. The learned advocate further drew my attention to the evidence of

PW6 Dr.Sameer Mandpe and submitted that this witness has not followed the procedure prescribed by the book titled as Modi's Medical Jurisprudence and Toxicology to find out whether there was penetrative sexual assault.

4 The learned APP opposed the application.

5 The case in hand is that of repeated penetrative sexual assault on a female child aged about 6 years, who is examined as PW3 by the prosecution. She deposed that the present applicant/accused used to take her to the terrace of the building and used to indulge in repeated penetrative sexual assault on her.

6 The First Information Report (FIR) of the crime in question is lodged by mother of the female child and she narrated about disclosure by her daughter regarding the spot as a room on the third floor. This, is a minor discrepancy, as the fact in issue is whether penetrative sexual assault took place or not.

7 Version of the minor female child is fully corroborated by medical evidence on record coming from the mouth of PW6 Dr.Sameer Mandpe and the extensive damage caused to the victim is reflected in medical examination, the findings of which are thus :

“On local examination which refers to examination of private parts, I noticed mild swelling over labia majora over lower end bilateral present. Redness present over the swelling bilaterally. Labia majora gaping. Vaginal orifice can be easily seen through gaping. Labia majora at lower end. In normal patient of age 6 years old girl, usually there is no gaping between labia majora and hymen can only be seen after manually separating the labia majora. On separating the labia, vaginal orifice clearly seen. Only hymenal ring noted. No active bleeding. Hymen was not intact and only hymenal ring was present. It indicates something has happened through hymen or something has made trauma to the hymen.”

8 In the wake of this positive finding, wherein the Medical Officer has noticed gaping of labia majora and visibility of

vaginal orifice by bare eyes on separating labia and complete absence of hymen, in my considered opinion, no further tests were required in the matter for arriving at the conclusion regarding repeated penetrative sexual assault on the tiny tot.

9 In the light of foregoing discussion, no case for grant of bail is made out.

10 The application is, therefore, rejected.

(A. M. BADAR, J.)