

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

CRIMINAL APPLICATION NO. 1260 OF 2016

IN

CRIMINAL APPEAL NO.669 OF 2016

Shanky Rameshbhai Chauhan ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr.Rajesh P. Khobragade for the applicant

Mr. S.V.Gavand, APP for the respondent.

CORAM: A.M. BADAR, J.

DATED: 17th JANUARY 2018

PC:-

1. This is an application for suspension of sentence and releasing the applicant/accused on bail during the pendency of the appeal filed by him. The applicant/accused is convicted of the offence punishable under Section 6 of the Prevention of Children from Sexual offences Act, 2012 and he is sentence to suffer rigorous imprisonment for 10 years, on that count,

apart from imposition of some fine. He is also convicted of the offence punishable under 347 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for one year on that count.

2. Heard the learned advocate appearing for the applicant/accused. He argued that the applicant is in custody right from the year 2014 and he has undergone major part of the sentence imposed on him. The learned advocate further argued that PW-1 mother of the alleged victim had not seen anything and her evidence is hear say. The learned advocate further argued that evidence of PW-3 and PW-5 is of no assistance to the prosecution, as they had stated that the applicant/accused was not on the ground floor at the time of the incident, when the incident took place on the ground floor. They had stated that the applicant was working on first and second floor. The learned advocate by comparing evidence of PW-1 mother and the investigating officer criticised the evidence of both the witnesses in respect of the

approaching to the Cooper Municipal hospital. Evidence of PW-8 Dr. Nupur Mishra was also referred and criticised by the advocate for the applicant/accused. It is further argued that the entire place was covered by the CCTV camera but recording does not show presence of the applicant. Medical evidence is not supporting the case of the prosecution.

3. The learned APP opposed the application by contending that age of the victim as well as the evidence of the medical officer needs consideration.

4. The case in hand, is a case of committing aggravated penetrative sexual assault on a tiny tot aged about 4 years and 9 month at the rest room of Jamnabai Nursy School Juhu, where she was taking education in senior KG class.

5. Evidence of PW-1, who is mother of minor female victim shows that on 29.9.2014 her four years and 9 months

old daughter i.e. PW-2 complained about itching at the private part. Evidence of PW-1 mother shows that private part of her daughter was looking reddish. On the next day, PW-1 mother heard narrations of her daughter i.e PW-2 about penetrative sexual assault on her by the present applicant, who was working as sweeper in the school. Section 157 of the Evidence Act makes this evidence relevant and it cannot be treated as hearsay evidence. Recitals of the minor female victim of the crime in question are duly proved by PW-1 mother. That apart, PW-1 mother has seen the condition of private part of her tiny tot on the date of the incident itself.

6. Evidence of PW-8 Dr. Nupur Mishra shows that upon examination of the minor female victim of the crime in question, it was seen that there was edema with tenderness at the private part of the minor female victim.

7. Evidence of minor female victim of the crime in question candidly shows that when she entered in the bathroom of the

school, applicant entered, closed the door and inserted his fingers in her private part. Though in cross-examination, the minor female victim of the crime in question has stated that she is brought to the Court by her parents and her parents had told her the purpose of coming to the Court and that her parents had disclosed which questions will be asked and what answers were supposed to be given, half-hearted cross-examination does not pin points the fact that it was not the appellant accused, who had committed the crime in question. In case of penetrative sexual assault of minor female victim evidence of prosecution is required to be considered with broader perspective and Court is not required to sway itself with minor contradictions and omissions. Medical evidence is supporting the version of the victim. Evidence of the mother of the victim is corroborating the version of the victim and has also proved the former statement of the victim.

8. Considering the nature of offence and situation in which it is committed, no case for grant of bail is made out. The application is therefore, rejected.

(A.M. BADAR, J)