

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 124 OF 2019
IN
CRIMINAL APPEAL NO. 199 OF 2019**

Suresh Pandurang Tambe ... Applicant

V/s.

The State of Maharashtra and Anr. ... Respondents

Mr. Harshad Sathe for Applicant.

Mr. S.S. Pednekar- APP for the State.

**CORAM : SMT. SADHANA S. JADHAV, J
DATED : 5TH AUGUST, 2019.**

P.C. :

1. Heard the learned counsel for the Applicant and the learned APP for the State.
2. Perused the evidence adduced by the prosecution at the trial. More particularly, the substantive evidence of PW-1 who happens to be a mother of the Victim and PW-2 the victim person.
3. At the outset, it needs to be observed that the investigating agency has not followed the mandate of Section 24 and Section 25 of the Protection of Children from Sexual Offences Act, 2012.

4. The evidence of the Victim would show that the applicant herein has put his finger in her private part in his own house. In the substantive evidence the victim has categorically stated as follows:

“it is true that whatever I telling, I am telling at the instance of my mother”.

5. Besides, the said statement there is no other corroborative evidence. The learned Judge has held that the offence committed by the appellant falls in the category of Section 375-B of Indian Penal Code and Section 3 of the Protection of Children from Sexual Offences Act, 2012.

6. The learned Counsel for the applicant submits that *Prima Facie*, upon perusal of the evidence, it would appear to be an offence which would fall under Section 7 of the Protection of Children From Sexual Offences Act, 2012.

7. The applicant is in custody since 1st April 2017 he has undergone two years of Rigorous Imprisonment. At present, this Court is hearing the Jail Appeals of the year 2012.2013 and there are rare choices that the appeal could be heard at the earliest.

8. Be that as it may, in view of the judgment of the Hon'ble Apex Court in the case of ***Kiran kumar Vs. State of M.P. 2001 AIR SCW 5130***, this Court is of the opinion that

the applicant deserves to be enlarged on bail, upon imposing certain stringent conditions. Hence, the following order:

Order

- i) The Criminal Application is allowed.
- ii) The substantive sentence imposed upon the applicant is hereby suspended.
- iii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 30,000/- and one or more solvent sureties in the like amount.
- iv) The applicant shall not reside at Post-Karbude, Mulgaonwadi, Tal. Dist.-Ratnagiri for a period of six months from the date of release.
- v) Upon being enlarged on bail the applicant shall cause his presence before the Special Court, Ratnagiri once in six months on the date assigned by the learned Judge, Ratnagiri.
- vi) Upon failure to attend any two consecutive dates, the learned Judge, Ratnagiri shall make a report to the High Court and the prosecution would be at liberty to seek cancellation of bail.
- vii) The application stands disposed of.

(SMT. SADHANA S. JADHAV, J)