

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

**CRIMINAL APPLICATION NO. 1354 OF 2019
IN
CRIMINAL APPEAL NO. 1110 OF 2009**

Harchandra @ Harishchandra Baban Patil ...Applicant
Vs.

State of Maharashtra ...Respondent

- Mr. Ganesh Gole, Advocate for the Applicant.
- Ms. Pallavi Dabholkar, APP for the State/Respondent.

**CORAM : P.N.DESHMUKH, J.
DATE : 4th OCTOBER, 2019**

P.C. :

1. This application is filed for suspension of sentence and for bail by the applicant, who is convicted for the offences punishable under section 354 of the Indian Penal Code, under Section 8 of the Protection of Children from Sexual Offences Act, 2012 and under Sections 3(1)(w)(i)(ii), 3(2)(v-a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Maximum punishment imposed to the applicant is for three years for the offences punishable under Section 354 of the IPC and for section 8 of the POCSO Act.

2. Learned counsel for the applicant submitted that inspite of the fact that the applicant is convicted for maximum

sentence of three years, trial court has not suspended the same observing that the application is not tenable. It is further submitted that the applicant is infact falsely involved as relations between the father of the victim girl and accused were strange since prior to the incident. It is also contended that no independent witnesses are examined. It is, therefore, prayed that the application be allowed.

3. Learned APP opposed the application on the ground that there is direct evidence establishing applicant's involvement in the present crime and that the prosecutrix is minor, application is prayed to be rejected.

4. In the background of the submissions as aforesaid, the prosecutrix is found aged 17 years of her age and was studying in 9th standard. She claims her date of birth as 25th October 2000. However, counsel for the parties admit that there is nothing on record to establish the said date of birth of the prosecutrix, except for her evidence.

5. On the point of incident, it is the case of the victim that on 4th July 2017, when she was alone in the house at around 11.00 a.m. accused visited her house and inappropriately touched her person and on her raising shouts, left her saying

that not to disclose the said fact to anyone. After the arrival of her parents to her house, report came to be lodged vide Exh.7.

6. It is specific case of the appellant that he is falsely implicated. Perusal of cross-examination of prosecutrix would reveal that appellant was having brick-Kiln factory while victim's father was working as his driver for transporting bricks required at the factory. She has further admitted that since one month prior to the incident, her father was not attending the work of appellant. On this aspect, evidence of PW-2, mother of the prosecutrix, corroborated the said evidence where she has admitted that her husband was working as driver for accused for 4-5 years and since one month prior to the incident was not attending his work however. She has not aware for reason not to attend the work. Said witness is suggested that her husband was not attending the work of appellant as he owed amount of Rs. 25,000/- to him, which was earlier provided to him and on this issue there used to be quarreled amongst them. Though , this suggestion is denied, *prima facie* there is substance in the same as there appears no other reason for the father of the prosecutrix not

to attend the work though was working for the appellant for 4-5 years as driver.

7. On the aspect of non-examination of independent witnesses, evidence of PW-6, Investigating officer, is that during the course of investigation, he made inquiry with the persons of surrounding area of the house of the complainant and also recorded their statements. However, admittedly, except for parents of the prosecutrix, prosecutrix herself, her uncle and panchwitnesses, no neighbours are examined.

8. Having considered above evidence and since appellant even otherwise is imposed lesser sentence upto three years, application is liable to be allowed as per order below:-

ORDER

1. Applicant shall be released on bail on his executing PR bond in the sum of Rs.20,000/- (Rupees Twenty Thousands Only) with one surety in the like amount.
2. Applicant shall be marked his presence with Police Station Bhiwandi, District Thane, quarterly on the 1st day of each such month, pending appeal.
3. Criminal Application is disposed of.

(P.N.DESHMUKH, J.)