

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

**CRIMINAL APPLICATION NO.2109 OF 2018
IN
CRIMINAL APPEAL NO.1570 OF 2018**

Mohammad Hasumali Abdulali Ansari ..Applicant

V/s.

The State of Maharashtra .. Respondent

Mr.Avinash H. Fatangare i/b Ms.Vishakha V. Pandir for the
Applicant/Appellant.

Mr.Vinod Chate, APP for the Respondent-State.

CORAM : A.M. BADAR, J.

DATE : 27th AUGUST 2019

P.C.

1. This is an application for suspension of sentence and releasing of accused on bail during the pendency of the appeal filed by him. He is convicted for the offences punishable under Section 376(2)(i) of the Indian Penal Code as well as under Section 3 read with 4 of the Protection of Children from Sexual Offences Act, 2012 by the learned Trial Court. The applicant is sentenced to suffer rigorous imprisonment for 10 years apart from direction to pay fine of Rs.25,000/- and in default to undergo further rigorous imprisonment for 6 months.

2. Heard learned counsel appearing for the applicant. He argued that the alleged victim of the crime in question has denied happening of the incident when questioned by her mother P.W.-6-Nam Lalit. It is further argued that statement of the victim female child was not found with the charge-sheet and it's entry was not taken in the Case Diary. It was produced when the non-bailable warrant issued against the Investigating Officer. The learned counsel further argued that no statements of persons available at the building were recorded by the Police. Alleged contradiction in timings as 11.30 a.m. as stated in substantive evidence and 12.30 p.m. stated in the FIR by P.W.-6-Nam Lalit were pointed out. It is further argued that the evidence is contradictory and panch witnesses have not signed the documents. They were habitual witnesses employed by the Police. Evidence of P.W.2-Doctor Reshma Waghmare is criticized by stating that her cross-examination indicates that redness can be a sign of unhygienic condition. With this it is argued that the applicant is behind bar for six years and needs to be enlarged on bail.

3. The learned Additional Public Prosecutor opposed the application.

4. By now, it is settled that in offences relating to female child so also women, testimony of the prosecutrix if found trustworthy and reliable can be acted upon without need of corroboration thereto. Similarly, it is settled that time is not essence of life so far as rustic witnesses are concerned. Discrepancy which does not go to the root of the matter can not be used to jettison the evidence of prosecution.

5. P.W-6-Nam Dalit mother of the victim female child has stated that she noticed reddishness at the private part of her female child upon hearing the fact that the one person from the building had committed sexual assault on her daughter. She stated that her daughter denied the incident. Feeling of guilt and shame needs to be kept in mind while appreciating the conduct of the victim of the sexual offence.

6. The victim of the crime in question who at the relevant time was aged about 7 years has deposed about the incident vividly and pointed out the applicant as a person who had committed penetrative sexual assault on her. Medical Officer Dr.Reshma Waghmare who is examined as P.W.-2 by the prosecution has deposed that after examination of the minor female child, she found

mild inflammation on labia majora and labia minora of the victim female child. Requirement of law is the slightest penetration in order to make out the aforesaid penetration sexual assault. Nature of crime, circumstance in which the same is committed, the victim are relevant consideration for determine whether the applicant is entitled for bail.

7. I am of the considered opinion that this is not a fit case where the applicant is entitled for bail though he might have spend six years in the custody. The application is therefore rejected.

8. Hearing of the appeal is therefore expedited.

(A.M. BADAR, J.)