

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

**CRIMINAL APPLICATION NO. 822 OF 2019
IN
CRIMINAL APPEAL NO. 760 OF 2019**

Haiderali @ Raju Ruhul Amin Shaikh .. Applicant

v/s.

The State of Maharashtra & Anr. .. Respondents

Mr. A.A. Mir for the applicant

Mr. M.R. Tidke, APP for the respondent – State

CORAM : PRITHVIRAJ K. CHAVAN, J.

RESERVED ON : 13th JANUARY, 2020

PRONOUNCED ON : 5th FEBRUARY, 2020

P.C.

1. The applicant has prayed for suspension of the execution of substantive sentence pending the appeal. On 27.10.2016, an FIR came to be lodged against the applicant under Section 376 of the Indian Penal Code read with Sections 4, 8 of the Protection of Children from Sexual Offences Act, 2012 (for short “POCSO”) with Wadala T.T. Police Station, Mumbai. After investigation, a charge-sheet was filed against the applicant. Charge was framed and he was put on trial. The prosecution examined 6 witnesses. The testimony

of the victim who was studying in 3rd standard at the relevant time reveals that on the day of incident, the applicant who was admittedly residing in the neighbourhood, took her inside the house, removed her *Ghagara* and put his finger in her private part. She pushed him aside and came outside the house and informed her sister PW-3. She had also narrated the incident to her maternal aunt. Her statement also came to be recorded by the Metropolitan Magistrate. Even during cross, it has been reiterated that at the time of incident, the applicant was present inside the room of his house and that the victim along with other girls were playing over there. Other persons inside the house were not visible to them. The cross reveals that despite telling the other persons over there about the act of the applicant, nobody came forward to help her. Those, persons were at a distance of about 20 to 30 feet.

2. The mother of the victim testified that the victim is her second daughter who was 7½ years old at the time of incident. Around 7.30 p.m. on that date, the applicant took her inside his house and inserted his finger in her vagina. The victim had first told about the incident to her sister and then her sister narrated the incident to this

witnesses. The mother of the victim had lodged an FIR at Exhibit-17. There seems to be no reason to depose falsely against the applicant as apparently nothing could be elicited in the cross, which would point out some grudge or enmity against the applicant.

3. The elder daughter of the victim who was 13 years old at the time of her evidence, materially corroborated the version of the victim and her mother in regard to the act of the applicant. She specifically testified that the victim was applying oil on her private part and, therefore, when she inquired, the victim narrated the incident.

4. Dr. Narendra Kumar, who examined the victim though testified that there were no injuries to the genitals and the hymen was intact, yet that itself cannot be the reason to falsify the otherwise cogent testimony of the victim corroborated by the other witnesses.

Despite residing in the neighbourhood, the applicant had molested the victim and, therefore, it would not be safe to enlarge him on bail, pending the appeal as his indulgence in similar offences cannot be

totally ruled out. Moreover, he has been recently convicted and sentenced in the month of April, 2019. Merely because he was on bail during the trial, cannot, as of right, be a ground to claim his release on bail pending the appeal.

5. For the reasons aforesaid, I do not find it to be a fit case to invoke Section 389 of the Criminal Procedure Code. Consequently, the application is rejected.

(PRITHVIRAJ K. CHAVAN, J.)