

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

**CRIMINAL APPLICATION NO.849 OF 2019
IN
CRIMINAL APPEAL NO. 775 OF 2019**

Sangram Vilas Jagtap ... Applicant

Versus

1. The State of Maharashtra
2. Jayshree Jayprakash Mane ... Respondents

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Ms. Anjali Patil, Advocate for the Applicant.

Mr. A. R. Kapadnis, APP for the Respondent – State.

Ms. Sarika Mhatre for Respondent No.2.

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CORAM : PRAKASH D. NAIK, J.

DATE : 9th DECEMBER, 2020.

PER COURT:

1. The applicant has preferred this application for suspension of sentence and grant of bail during the pendency of appeal preferred by the applicant challenging Judgment dated 23rd April, 2019 convicting him for the offence punishable under Section 376(i) of Indian Penal Code (for short “IPC”), Section 377 of IPC, Section 323 of IPC, Section 341 of IPC and Section 354 of IPC. The applicant has been sentenced to suffer rigorous imprisonment for Ten years, Five years, Six months, One month and One year respectively on each count.

2. The case of the prosecution is that the victim girl aged

about Ten years at the time of incident was sexually assaulted by the accused. On 1st March, 2017 the victim had returned from school early. She went to play with her friends. The victim then informed her mother that the accused took the victim in his house saying that he had Barbie CD and he will show the same to the victim. She was taken on mezzanine floor. The accused removed the clothes of the victim and sexually assaulted.

3. Learned advocate for the applicant submitted that there is no evidence to convict the applicant for the alleged offences. There are major omissions and contradictions in the evidence of victim and other witnesses. The medical evidence does not support prosecution case. The applicant is in custody for Three and half years. The statement of two children who were allegedly playing with victim were not recorded. The version of the victim relating to the alleged act of sexual assault is in the form of omission. The victim could not describe the act and there is not evidence to show that the victim was sexually assaulted or that the accused have committed unnatural sex with her. The evidence of victim and the complainant (mother of victim) is contradictory to each other. The alleged act of rape is not spelt out in the statement of the victim. There was no injury on the person of the victim to substantiate the allegations of sexual assault. Learned advocate relied upon the Judgments and the orders passed

in other matters in support of her submission.

4. Learned APP submitted that there was no reason for the victim child to falsely implicate the accused. There was no enmity between the family of accused and victim. There is no omission in respect to the alleged act of sexual assault. The statement of the victim under Section 161 of Cr.P.C. attributes specific overt act to the accused having sexually assaulted the victim. The victim was aged about 10 years.

5. Learned advocate for respondent No.2 adopted arguments of learned APP. She submitted that the victim was minor girl aged about 10 years. Some minor discrepancies cannot discard her evidence. Medical evidence supports the version of the victim.

6. The prosecution case relates to the sexual assault on the victim girl aged about 10 years at the time of incident. The trial Court has convicted the applicant for the aforesaid offences. The trial Court had observed that there was act of penetration by accused on private part of the victim as well as anus. The version of the victim is corroborated by other witnesses. After occurrence of incident the victim came out of house with crying and immediately after the incident she disclosed what had happened with her to witnesses. There was no previous enmity between victim and accused. She went to the house of the accused for playing. The circumstances is brought

on record and the observations while recording testimony of victim that, she was unable to control her crying in the witness box, were noted by the Court. It was observed that the testimony of the witnesses inspires confidence. The statement of the victim recorded under Section 161 of Cr.PC. refers to the sexual assault. The victim has deposed this fact in the evidence. Obviously this is not the stage to give finding on the evidence recorded by the trial Court. The evidence would be scrutinized in detail at the time of hearing of appeal. Since the applicant is in custody for above three and half years, hearing of appeal can be expedited. Considering the aforesaid facts, no case for suspension of sentence is made out. Hence, I pass the following order:

ORDER

- i) Interim Application No. 849 of 2019 is rejected and stands disposed of accordingly.
- ii) Hearing of appeal is expedited.
- iii) Liberty to apply for hearing after the paper book is ready.

7. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)