

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

**CRIMINAL APPLICATION NO. 1420 OF 2019
IN
CRIMINAL APPEAL NO. 1357 OF 2019**

Ishwar Kachru Waghchoure .. Applicant

v/s.

The State of Maharashtra & Ors. .. Respondents

Mr. Vedraj Pal for the applicant
Mrs. M.R. Tidke, APP for respondent – State

CORAM : PRITHVIRAJ K. CHAVAN, J.

**RESERVED ON : 24th JANUARY, 2020
PRONOUNCED ON : 7th FEBRUARY, 2020**

P.C.

1. Heard the learned Counsel for the applicant.
2. The applicant has prayed for suspension of sentence, pending the appeal. The applicant has been convicted by Special Judge, POCSO of the offence punishable under Section 5 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO') for which he has been sentenced to suffer Rigorous Imprisonment for 5 years with fine of Rs.5,000/-, in default, rigorous imprisonment for 5

months. He is convicted under Section 506 of the Indian Penal Code and sentenced to suffer Rigorous Imprisonment for 1 year with fine of Rs.5,000/- in default, rigorous imprisonment for 1 year. The substantive sentences were directed to run concurrently.

3. The applicant was residing in the neighbourhood of the complainant. The victim is the daughter of complainant who was 9 years old and studying in 4th standard at the time of incident. The relations between the accused and the complainant's family were cordial. The complainant, who is the mother of the victim was working as a Security Personnel.

4. On 02.07.2014, it was raining and, therefore, the applicant called the complainant and informed that he will come to receive her at Kurla Depo. Accordingly, the complainant accompanied the applicant to her house from Kurla Depo. After returning home, she went to sleep as she was tired. After some time, when she heard some noise from the room where the victim was studying, she got up and went towards the room of the victim and noticed that the applicant was lying over the victim. The complainant raised an alarm due to which the applicant escaped from the spot.

5. When the complainant inquired with the victim, she informed that the applicant used to touch her breast inappropriately and used to insert his hand inside her inner ware. The victim further informed that the applicant has been visiting their residence whenever she used to be alone in the house and then used to kiss and used to touch her breast. The complainant, therefore, called her husband and narrated the incident. The matter was reported to the police station. If the evidence of the victim is perused, it reveals about the incident which occurred on 02.07.2014.

6. The victim in her evidence deposed that her date of birth is 08.07.2005. There is no dispute about the age of the victim. She deposed that the applicant used to visit the house in the absence of her parents and used to make inappropriate touch to her breast. He used to sleep above her and used to kiss her lips. He used to insert his hand in her pant. She deposed that the applicant did such act several times. He threatened the victim that if she disclose, the incident to her parents, he would beat her with a footwear. It is apparent from the evidence that the applicant, under the garb of taking the study of the victim, betrayed the trust of her parents and

victim also and molested her. The repeated acts of the applicant indicate his propensity and, therefore, it would not be safe to release him on bail pending the appeal as he is next door neighbour of the victim, who will probably undergo psychological trauma in case the applicant is released on bail. There are neither material omissions nor contradictions on record nor the defence has succeeded in shattering the version of the prosecution witnesses and that of the victim. It seems that the accused in his defence evidence admitted about his visit to the residence of the complainant on the date of the incident.

7. Under such circumstances, it would not at all be safe to enlarge the applicant on bail, pending the appeal. Indulgence of the applicant in similar offences in case of his release cannot be totally ruled out. I am, therefore, not inclined to grant the prayer.

8. The application is rejected.

(PRITHVIRAJ K. CHAVAN, J.)