

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO.31 OF 2021
IN APPEAL/639/2020**

Rahul Shivprasad Agrawat,
Age : 28 Years, Occu : Electrician,
R/o. Lonar, Tq. Mehkar Dist. Buldhana
At present Nilkamal Society,
RX-1/3 H.No.13 Bajajnagar,
Aurangabad Tq. & Dist : Aurangabad.

... Applicant
(Orig. Accused)

VERSUS

The State of Maharashtra
through Government Pleader,
High Court of Judicature of Bombay
Bench at Aurangabad.

... Respondent
(Orig. Complainant)

...

Advocate for Applicant : Mr. A.S. Tilve
APP for Respondent/State: Mrs. R.P. Gaur

...

CORAM : MANGESH S. PATIL, J.

DATE : 14.01.2021

PER COURT :

Heard.

2. In this Appeal against conviction of the applicant for the offences punishable under Section 3(b), 4, 5(m), 5(n) and 6 of the Protection of Children from Sexual Offences Act, 2012, he is seeking suspension of sentence under Section 389 of the Code of Criminal Procedure.

3. Shortly stated the prosecution case is that the prosecutrix is a minor girl, less than 15 years of age who alleged about the appellant who

happens to be her paternal uncle having subjected her to sexual offence by inserting finger in her private part while she was sleeping in the house of her grant parents.

4. The learned advocate for the appellant points out that there is enormous delay in lodging the FIR. Though the incident is stated to have taken place in the night between 07.09.2013 and 08.09.2013, the FIR has been lodged on 20.09.2013. There is no plausible explanation coming forth for such delay. There is no concrete medical evidence corroborating the prosecution version. There is also material discrepancy in the medical evidence in as much one of the Medical Officers namely Dr. Patil (PW-7) though has stated about having noticed injury on the private part of the victim, he has opined that the age of the injury was 48 hours. He stated to have examined her on 20.09.2013 whereas the incident had taken place more than 12 days prior thereto. He would thus submit that there is no concrete evidence to corroborate the version of the prosecutrix about sexual offence.

5. The learned advocate would then point out that there is some matrimonial dispute between the parents of the victim and he is being falsely implicated for that reason. The learned Judge has not taken into consideration these aspects and has drawn conclusion based on surmises and conjunctures.

6. Lastly, the learned advocate points out that the appellant was on bail during pendency of the trial. There are no allegations about he

having misused the liberty or made any attempt to tamper the evidence. The appeal is not likely to be heard in the near future. He is ready to abide by any condition and the sentence be suspended during pendency of the Appeal. He also places reliance on the decision of the Supreme Court in the case of **Bhagwan Rama Shinde Gosai and Ors. Vs. The State of Gujrat ; AIR 1999 SC 1859.**

7. The learned APP strongly opposes the Application. She points out that it is a serious offence involving a minor child. There is a special statute to meet the contingency. At this juncture there is nothing to disbelieve the version of the prosecutrix. Taking into account the fact that the appellant happens to be her paternal uncle it is highly improbable that she would come out with such false allegations.

8. The learned prosecutor would further submit that threadbare scanning of the material is not possible at this juncture. *Prima facie* there is medical evidence about injury to the private part and in the circumstances when the offence is heinous, the sentence may not be suspended.

9. I have carefully gone through the papers. As is pointed out, admittedly, the appellant has been on bail during pendency of the trial. There are no allegations about he having misused the liberty.

10. Besides, *prima facie* there is enormous delay in lodging the FIR. Pertinently, the incident is stated to have taken place in the house of the grand parents of the victim. The grandmother was very well sleeping in the house still no grievance was made by the victim to her promptly nor was any

such grievance made to anybody else within reasonable time. No plausible explanation is coming forth for not disclosing the incident.

11. Similarly, though Dr. Patil (PW-7) has spoken about some injury to the private part of the victim, he stated the age of the injury to be 48 hours old. He states to have undertaken such medical examination on 20.09.2013, whereas, the incident is stated to have occurred in the night intervening 07.09.2013 and 08.09.2013.

12. Considering all the aforementioned facts and circumstances and when it is writ large that going by the pendency of the matters in this Court, the Appeal is not likely to be heard in the near future, the sentence deserves to be suspended.

13. The Application is allowed. The substantive sentence shall stand suspended during the pendency of the Appeal.

14. The appellant shall be released on bail on his executing personal recognizance for an amount of Rs.25,000/- and on furnishing a solvent surety in the like amount.

15. Bail before the trial Court.

(MANGESH S. PATIL, J.)