

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

**942 CRIMINAL APPLICATION NO. 1653 OF 2020
IN
CRIMINAL APPEAL NO. 559 OF 2019**

Shaikh Anees S/o. Shaikh Hussain (Habib) ...**APPLICANT**
Age-27 years, Occu-Labour,
R/o. Rengtipura, Near Aziz Dal,
Aurangabad, Dist. Aurangabad

VERSUS

1. The State of Maharashtra ...**RESPONDENT**
For the Jinsi Police Station Aurangabad

Mr. A. S. Gandhi, Advocate for the applicant
Mr. S. P. Sonpawale, APP for the respondent/State
Mr. Ashok A. Mundhe, Advocate for the respondent (appointed) in
Appeal No.559/2019

CORAM : SURENDRA P. TAVADE, J.

DATE : 05-10-2021

P. C.

. The applicant has filed the bail application challenging the judgment and order dated 16-05-2019 passed by the Special Judge-3 (under POCSO Act), Aurangabad in Special POCSO Case No. 56 of 2018. The applicant is held guilty and convicted for the offence punishable under Section 4 of the POCSO Act and sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.3,000/-, in default to suffer rigorous imprisonment

for three months, he is also convicted under Section 5 (m) & (n) read with Section 6 of the POCSO Act and sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs. 5,000/-, in default to suffer rigorous imprisonment for five months. It is alleged against the applicant that on 02-03-2018 the applicant took the victim girl to his house and committed sexual assault on her. It is alleged that the victim girl was aged about three and half years old at the time of incident. It is alleged that the victim girl disclosed the incident to her mother and thereafter, FIR came to be lodged against the applicant.

2. It is contended that the victim as well as her mother have not supported the case of the prosecution. There is no medical evidence on record to establish that the applicant had committed sexual assault on the victim girl. But, still the trial court has convicted the applicant on the basis of statement of the victim girl recorded under Section 164 of the Code of Criminal Procedure and the history recorded by the Medical Officer in MLC papers. It is contended that the offences under Section 4, 6, 5(m) & (n) of the POCSO Act are held to be proved against the applicant. It is contended that it will take time to hear the criminal appeal filed by the applicant. The applicant is already undergone sentence more than four and half years. Therefore, he prays for bail.

3. Learned APP submits that there is material against the applicant that he sexually assaulted the victim who was aged three

and half years at the time of incident. He submits that there is evidence against the applicant which was properly appreciated by the trial court. It is contended that the victim girl and her mother had given history of incident before the Medical Officer which was proved by the Medical Officer. Similarly, the Medical Officer has also opined that there was injury on private part of the victim girl which might have committed due to sexual assault. It is contended that the applicant and the victim girl are residing in the same area. So, there is possibility of tampering the witnesses cannot be ruled out.

4. Heard learned counsel for the applicant, learned APP for the respondent/State and learned counsel for the respondent No.2.

5. Perused the evidence of the victim girl which was recorded in question and answer form. In examination-in-chief the victim has categorically stated that she disclosed to her mother that the applicant removed her pant and inserted something in her private part. In cross-examination she admitted that the applicant did nothing with her. He did not remove her pant and the applicant was not present on the spot.

6. On going through the above evidence, it appears that the victim who was aged about three years at the time of incident and she was immediately examined by the special court. So, her age was three years at the time of deposition. So, she has given two version that the applicant inserted something in her private

part and she also admitted that the applicant did nothing to her.

7. On perusal of the evidence of mother of the victim, it appears that she has also not supported the case of prosecution. But, she has stated that in the night of incident at about 12.00 midnight the victim girl started weeping and she took her to Ghati Hospital where doctor examined her and gave medicine and she returned to house at 03.00 am. She further deposed that next day morning the victim started weeping. They took her to Ghati Hospital and the victim girl was admitted. She admitted that police had recorded her statement. So, it appears that there was incident in the midnight wherein the victim had made complaint to her mother. Therefore, she was taken to hospital. She was treated there. Thereafter, the victim was referred to Government Medical College on 03-03-2018. The incident had taken place in the midnight intervening between 02-03-2018 and 03-03-2018.

8. The Medical Officer has deposed that on 03-03-2018 at about 02.30 pm she examined the victim girl and found injury on right labia majora size 0.5 x 0.5 cm surrounded by redness. The Medical Officer opined that there were signs suggestive of forceful recent penetration of vagina and sexual intercourse cannot be ruled out. The Medical Officer had recorded history narrated by mother of the victim wherein there are specific allegation that the applicant had sexually assaulted the victim girl. It appears that the medical evidence shows that the victim was sexually assaulted. The

statement of the victim girl recorded under Section 164 of the Code of Criminal Procedure and the history recorded by the Medical Officer in MLC papers have been properly appreciated by the trial court and came to correct conclusion.

9. The applicant and the family of the victim are residing in the same area, therefore, it would not be just and reasonable to enlarge the applicant on bail. Therefore, in my opinion the applicant is not entitled for bail during pendency of the appeal. Hence, the application is rejected.

[SURENDRA P. TAVADE, J.]

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