

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

**CRIMINAL APPLICATION NO. 2462 OF 2020
IN
CRIMINAL APPEAL NO. 119 OF 2021**

Ayub s/o Mohammad Patel,
Age; 37 yeas, Occ; Labour,
R/o; Land Gut No. 785, Andhari Shivar,
Tq. Sillod, District Aurangabad
Now R/o at Central Jail, Aurangabad. ...Applicant

VERSUS

State of Maharashtra
Through Police Inspector,
Police Station, Sillod (Rural),
Tq. Sillod, District Aurangabad. ...Respondent.

...
Advocate for Applicant : Mr. M.P.Bhaskar
APP for Respondent-State : Mrs. R.P.Gaur
...

CORAM : SURENDRA P.TAVADE , J.

DATE : 2nd September, 2021.

ORDER :

1. This is an application for bail in Crime No. 145 of 2015 registered at Sillod (Rural) Police Station, District Aurangabad for the offences punishable under Sections 376 (2) (1) and 377 of Indian Penal Code (for short 'IPC') and under Section 3 read with Section 4, 11 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO') Act.

2. Facts giving rise to the present application can be summarized as under :

The applicant was prosecuted for the above offences. He was convicted for the offences punishable under Section 4 of the POCSO Act and sentenced to suffer R.I. for 7 years and to pay fine of Rs. 500/- I.D. to suffer S.I. for one month. He is also convicted for the offence punishable under Section 12 of the POCSO Act and sentenced to suffer R.I. for 1 year and to pay fine of Rs. 500/-, I.D. to suffer S.I. for one month.

3. The said judgment and conviction was challenged by the appellant by filing a criminal appeal bearing No. 119 of 2021. It is contended that the applicant has already undergone 3 years, 6 months and 12 days sentence. He is suffering from tuberculosis disease. It is contended that the trial Court has not appreciated the evidence of the victim and her mother in proper perspective. There is no legal evidence against the applicant. There is no possibility of early hearing of the appeal. Hence it is prayed that as the applicant has already undergone half of the punishment, he may be released on bail on any conditions.

4. On the other hand the learned APP for the respondent State submits that at the time of incident the victim was aged about 13 years. She was alone in the house at the time of incident.

Applicant is the uncle of the victim. He took dis-advantage of the loneliness of the victim in the house and committed crime. He submits that if the applicant is released on bail, he may threatened the witnesses. It is contended that the applicant was suffering from tuberculosis but, the jail authority has given him proper treatment and as per the latest report dated 24.08.2021 the general condition of the applicant is good and stable. Therefore, it is contended that no case is made out by the applicant for granting bail.

5. Heard learned counsel for the applicant. Perused the impugned judgment and order passed by the Special Judge, in Special Case (POCSO) No. 10 of 2016. Perused the evidence of the victim. It appears from the evidence of the victim that at the time of alleged incident she was aged 12 years. When she was alone at house, applicant entered into her house and demanded water and thereafter, the applicant lifted the victim and took her to his own house and committed sexual assault on her. It appears from the evidence of victim that the applicant is staying adjacent to her house. Looking to the relations between the applicant and the victim, it would not be just and reasonable to release the applicant on bail. There is sufficient evidence against the applicant under Section 4 and 12 of the POCSO Act.

6. As far as the medical condition of the applicant is concerned, the report was called from the jail authority, wherein, it is mentioned that the applicant is suffering from tuberculosis, but he is under treatment and his general condition is stable. There is no emergency to provide him treatment out side the jail. It appears that from the report of the Superintendent of Jail that the applicant is being provided proper medication as well diet, as desired by the Medical Officer. Therefore, on medical ground also, it would not be desirable to grant bail to the applicant, therefore, I am of the opinion that the application for bail has no merit. At the same time, appeal requires to be heard as early as possible, therefore, the learned counsel for the applicant/appellant and the learned APP for the respondent-State are directed to prepare for final hearing of the appeal, hence I pass following order :

ORDER

- a) Application is rejected.
- b) Criminal Appeal No. 119 of 2021 be listed for final hearing on 23.09.2021.

**(SURENDRA P.TAVADE)
JUDGE**