

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

**INTERIM APPLICATION NO. 773 OF 2021
IN
CRIMINAL APPEAL NO. 196 OF 2021**

Shafi Ahmed Shaikh Applicant
v/s.
The State of Maharashtra and anr. Respondents

Mr. B.B. Tiwari i/b. Mr. N.N. Kazi for the Applicant.
Mr. S.V. Gavand, APP for the State.
Ms. Trupti M. Khamkar for Respondent No.2.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 13th JULY, 2021.

P. C. :-

. This is an Application under Section 389 of the Code of Cr.P.C. for suspension of substantive sentence imposed by judgment dated 19/01/2021 passed by learned Special Judge (POCSO Act) & Additional Sessions Judge, Thane in Special Case No.162/2014.

2. The Applicant herein was tried for offenses punishable under Sections 376(2) (f) and (n), 323 and 506 of the Indian Penal Code and Section 6 r/w. Section 5(l) and (n) of the Protection of Children from Sexual Offences (POCSO) Act, 2012.

3. The charge against the Applicant is that he had committed rape and penetrative sexual assault on his niece who was below 18 years of age. The Applicant was also charged for causing hurt and criminally intimidating the victim. Upon considering the evidence on record, the learned Judge has held the Applicant guilty of the said offenses and sentenced him to undergo rigorous imprisonment for ten years and a fine of Rs.10,000/- in default to undergo rigorous imprisonment for six months in respect of the offenses under Sections 376(2) (f) and (n) of the Indian Penal Code and Sections 6 r/w. Section 5(l) and (n) of the POCSO Act, 2012. The Applicant is also sentenced to undergo imprisonment for one year and pay fine of Rs.1,000/- in respect of offenses under Sections 323 and 506 of the Indian Penal Code. All the sentences are ordered to run concurrently. Being aggrieved by the said sentence, the Applicant has preferred this Appeal and during the pendency of the said Appeal, he has prayed for suspension of the sentence.

4. Heard Mr. B.B. Tiwari, learned counsel for the Applicant, Mr. S.V. Gavand, learned APP for the State and Ms. Trupti Khamkar, learned counsel for Respondent No.2. I have perused the records and considered the submissions advanced by the learned counsels for the

respective parties.

5. The Applicant is the paternal uncle of the victim who was apparently below the age of 18 years as on the date of the alleged incident. The victim claims that since the month of April, 2014, the Applicant took her to different hotels and sexually abused her. It is the case of the Applicant that he has been falsely implicated because of the property dispute between him and his brother i.e., the father of the victim. The victim was cross-examined on this aspect. She claims that she was not aware whether her father had filed a suit against the Applicant in respect of a flat. Learned counsel for the Applicant has brought to my notice the Application dated 02/11/2018 filed by the victim before the Trial Court wherein she has categorically stated that the Applicant has not handed over the agreement in respect of a flat which is in the name of her father. She has also made reference to the civil litigation pending between her father and his brother. This fact clearly indicates that there is civil dispute between the Applicant and the father of the victim and that the victim was well aware of the same. Under the circumstances, *prima facie*, it is difficult to believe that the Applicant would seek permission of the parents of the victim to take her and her brothers to Matheran and that her parents would willingly

agree to send her to Matheran along with the Applicant.

6. The prosecution has allegedly seized registers of the concerned hotels. The victim has not made any reference to these hotels. Furthermore, there is no *prima facie* material to indicate that there is entry in the name of the Applicant and the victim in any of the registers. The Applicant was on bail during trial and he did not misuse the liberty granted to him. Appeal has been admitted and considering that final disposal of the Appeal is likely to take time, in my considered view, this is a fit case for suspension of sentence pending hearing the Appeal.

7. Hence, the Interim Application is allowed on following terms and conditions :-

(a) The Applicant is ordered to be released on bail on furnishing bail bonds of Rs.25,000/- (Rupees Twenty Five Thousand) with one or two sureties in the like amount to the satisfaction of the Trial Court ;

(b) The applicant shall report to the Trial Court, once in six months on the day/date specified by the Trial Court, till the Appeal is finally disposed of ;

(c) The Applicant shall keep the Trial Court informed of his current address and mobile contact numbers and/or change of residence or mobile details, if any, from time to time ;

(d) The applicant shall not interfere with the victim and other witnesses in any manner and shall not tamper with the evidence.

(e) If there are two consecutive defaults in appearing before the Trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

8. The Interim Application stands disposed of in above terms.

PREETI
H JAYANI

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(SMT. ANUJA PRABHUDESSAI, J.)