

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

**CRIMINAL APPEAL NO.406 OF 2021
WITH
INTERIM APPLICATION NO.745 OF 2020
IN
CRIMINAL APPEAL NO.406 OF 2021**

Frankie @ Babu Pedru Patil

...Applicant

Versus

The State of Maharashtra & Anr.

...Respondents

....

Mr. Datta Mane for the Applicant.

Mr. S.V. Gavand, APP for Respondent No.1-State.

Ms Farhana Shah for Respondent No.2.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 27th OCTOBER, 2021.

P.C.:-

INTERIM APPLICATION NO.745 OF 2020:-

This is an application under Section 389 of the Code of Criminal Procedure, 1973, for suspension of substantive sentence imposed by judgment dated 24/04/2019 passed by the learned Special Judge (POCSO) Act and Additional Sessions Judge, Thane, in Special Case No.69 of 2017 and to enlarge the Applicant on bail.

2. By the impugned judgment the Applicant has been held guilty of offences punishable under Sections 376(2)(n) and 506 of the IPC and Sections 6 r/w 5 and Section 12 r/w 11 of the Protection of

Children from Sexual Offences Act, 2012 (POCSO). The Applicant has been sentenced to undergo rigorous imprisonment for 10 years and to pay fine of Rs.10,000/- i/d. to undergo rigorous imprisonment for one year for offence under Section 376(2)(n) of the IPC and Section 6 of POCSO. In addition to the fine lesser term of imprisonment for offences punishable under Section 506 of the IPC and Section 12 of the POCSO Act have been imposed on the Applicant.

3. Heard Mr. Datta Mane, learned counsel for the Applicant, Mr. S.V. Gavand, learned APP for Respondent No.1-State. Ms Farhana Shah, learned counsel, who is on legal aid panel is appointed to represent Respondent No.2.

4. The Applicant herein, who was 52 years of age was charged for committing rape on a child, who was barely 12 years of age. The evidence of the PW2-prosecutrix reveals that the Applicant is her neighbour. He used to call her on her mother's mobile and would call her on the terrace of his house and commit act of penetrative sexual assault. Last such incident took place on 09/12/2016. When her mother questioned her as to who was making phone calls on her mobile phone, the victim disclosed that the Applicant herein used to call her on the terrace and would sexually abuse her. It was only then that PW3

mother of the prosecutrix lodged the FIR.

5. The prosecutrix was examined by PW5 Dr. Mugdha Jungari. She has deposed that hymen injury was present and there was an old healed tear at 6& 8 O'clock position. She has deposed that the overall findings of hymen injuries are consistent with the allegations of repeated penetrative sexual intercourse. Thus, the medical evidence corroborates the testimony of the victim.

6. The offence is of serious nature. Considering the gravity of the offence and keeping in mind the societal interest, in my considered view this is not a case for grant of bail. Hence, the application is dismissed.

CRIMINAL APPEAL NO.406 OF 2021:-

7. Considering the fact that the Applicant is in custody since 11/12/2016, hearing of the appeal is expedited. Appeal may be listed on final hearing board after receiving of record and proceedings and filing of the paper book.

(SMT. ANUJA PRABHUDESSAI, J.)