

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

INTERIM APPLICATION NO.1178 OF 2021
IN
CRIMINAL APPEAL NO. 321 OF 2021

Abdul Raheman Yunus Sayyed ..Applicant

v/s.

State of Maharashtra & Anr. ..Respondent

Mr. Mateen Shaikh a/w. Ansar Tamboli for the Applicant.
Mr. S.V.Gavand, APP for the Respondent-State.
Ms. Priyanka Chavan Advocate appointed for the Respondent No.2

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 27th OCTOBER, 2021.**

P.C.

1. Learned APP states that today's date has been intimated to the Respondent No.2. He has requested for appointment of an Advocate from the Legal Aid Panel. Ms. Priyanka Chavan, Advocate from the Legal Aid Panel is appointed to represent the Respondent No.2.

2. This is an application under Section 389 of Cr.P.C. filed by the aforesaid Applicant, for suspension of sentence imposed by judgment dated 16.02.2021 in Special Case No.20 of 2013 and enlargement on

bail.

3. By the impugned judgment the learned Judge has held the Applicant has been held guilty of offences under Section 377 and 342 of the Indian Penal Code and under Section 4 of the Protection of Children from Sexual Offences (POCSO) Act, 2012 and sentenced as under:

(i) to suffer rigorous imprisonment for 10 years and fine of Rs.10,000/- i.d. rigorous imprisonment for two months for the offence under Section 377 of IPC.

(ii) to suffer rigorous imprisonment of six months and fine of Rs.500/- I.d. to suffer rigorous imprisonment of one week for the offence under Section 342 of IPC.

(iii) to suffer rigorous imprisonment for 10 years and fine of Rs.10,000/- I.d. r.i. for two months for the offence under Section 4 of the POCSO Act .

4. Learned Counsel for the Applicant states that the evidence does not prove complicity of the Applicant in committing the crime. He submits that the statement of the victim was recorded after

considerable delay. The learned Counsel for the Applicant further submits that the medical evidence does not corroborate the testimony of the victim and in the absence of corroborative evidence, it is not prudent to convict the Applicant solely on the basis of the evidence of the victim.

5. Learned APP and learned Counsel for the Respondent No.2 submit that the evidence of the victim prima facie proves that on the relevant day he had gone to the shop of the Applicant. It is further stated that the evidence of the victim sufficiently proves that the Applicant had sexually abused him and had committed penetrative sexual assault and this fact is corroborated by medical evidence. The offence is of serious nature and hence the Applicant is not entitled for bail.

6. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties.

7. The victim (PW2) was a young boy of 9 years of age and child within the meaning of 2(d) of the POCSO Act. The evidence of the victim prima facie reveals that on 03.02.2013, his grand-father

(PW1) had purchased sandals from the shop of the Applicant. He went to the shop of the Applicant since his friend Sushil Kumar, wanted to buy similar sandals. The victim has deposed that the Applicant took him inside the room removed his pant and inserted his penis into his anus. The victim has deposed that he pushed him aside, wore his pants and came out of the shop. He narrated the incident to his grandfather , who questioned the Applicant and later lodged the report.

8. PW1 is the grandfather of the victim. His evidence also prima facie indicates that the victim had told him that he had gone to the shop of the Applicant with his friend and that the Applicant had taken him inside the room, removed his pant and had sexually assaulted him. Based on this narration, he lodged the FIR at Exhibit 20.

9. The victim was sent for medical examination. He was examined by PW4 Dr. Jayant Moger, who at the relevant time was a junior resident at Sasoon Hospital. PW4 has deposed that on local examination he could not make out injuries in the anal region, hence he called the senior Resident doctor for confirmation. Upon

examination he found an injury at anal region of length 8 m.m. and width and depth 3m.m to 2m.m. There was no bleeding at anal region. There was only lacerated wound or small cut wound. The injury at anal region was at 6 O’Clock position and simple in nature. He has deposed that the said injury was suggestive of sexual assault.

10. The medical evidence therefore prima indicates that there was an injury in the anal region which fact prima facie corroborates the testimony of the victim. Non finding of semen on the trouser prima facie is no ground to dis-believe the testimony of the victim as his evidence reveals that he had pushed aside the Applicant while he was attempting to penetrate his penis into his anus.

11. The evidence on record prima facie proves complicity of the Applicant in committing a crime which is of serious nature. Considering the nature of accusation, gravity of the offence, and keeping in mind the age of the victim and the societal interest, in my considered view, this is not a fit case for enlargement on bail. Hence the Application is dismissed.