

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

**INTERIM APPLICATION NO.1184 OF 2020
IN
CRIMINAL APPEAL NO.386 OF 2020**

Shailesh Shivram Jadhav .. Applicant/ Appellant

Versus

State of Maharashtra and Anr. .. Respondents

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Mr.Rakesh Bhatkar, Advocate for the Applicant/Appellant.

Mr.R.M. Pethe, APP for the Respondent No.1- State.

Ms.Drishti H. Shah, Advocate for Respondent No.2.

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CORAM : PRAKASH D. NAIK, J.

DATED : AUGUST 31, 2021.

P.C. :

This is an application for suspension of sentence and grant of bail pending Appeal preferred by the applicant challenging the judgment and order dated 17th February, 2020, passed by learned Special Judge, Ratnagiri in Special Case No.4 of 2016.

2 The applicant has been convicted for the offences punishable under Sections 377, 506 of Indian Penal Code ("IPC",

for short) and Sections 3 read with 4 of Protection of Children from Sexual Offences Act ("POCSO", for short). He has been sentenced to suffer rigorous imprisonment for seven years and two years.

3 The case of the prosecution is that the victim is boy aged about 16 years was subjected to unnatural sexual offence by the applicant-accused. On 9th August, 2015, similar acts were repeated after two three days. The complaint was lodged with the concerned police station on 30th September, 2015. Thereafter, the applicant was arrested. Charge-sheet was filed.

4 Learned counsel for the applicant submits that the applicant was on bail during the trial. He has not misused the facility of bail. He has good case on merits. The appeal is admitted and pending for final hearing. There are discrepancies in the evidence of the witnesses. The medical evidence does not support the prosecution case. There is delay in lodging the FIR. It has been lodged after 50 days from the date of incident. Applicant is in custody from 17th February, 2020. He is in jail for a period of 1 and ½ year.

6 Learned APP submitted that the evidence of the victim establishes the offence. Specific overtact has been attributed to the applicant. The prosecution has been able to establish the charges against the applicant. The offence is of serious nature.

7 Learned counsel for the complainant submitted that there is sufficient evidence on record to convict the applicant. The statements of the victim attributes overtact to the applicant. There is no reason to discard the evidence of the victim. The CD of the conversation was prepared. However, the same was not produced in the Court. The evidence of all the witnesses establish the offences against the applicant.

8 FIR has been lodged after a period of about 50 days from the incident. The medical evidence indicate that there was no injuries on the person of the victim. The applicant was on bail during the trial. It is urged by appellant that there are discrepancies of the evidence of the witnesses. P.W.No.7 medical officer has stated that while issuing letter Exhibit - 19, victim was not referred to her for examination. In case of unnatural offence and insertion of private part in anus, grievous injury is possible. If

such injury is not treated in time, than serious incident is possible. Witness did not find injury on anus of victim. The Appeal may not come up for hearing within short span of time. He is in custody from 17th February, 2020. Considering the circumstances, case for suspension of sentence is made out.

:: ORDER ::

- (i) Interim Application No.1184 of 2020, is allowed;
- (ii) During the pendency of Appeal No.396 of 2020, the sentence of imprisonment awarded vide impugned judgment and order dated 17th February, 2020, passed by learned Special Judge, Ratnagiri, in Special Case No.4 of 2016, is suspended, and, the applicant is directed to be released on bail on executing P.R. Bond in the sum of Rs.25,000/-, with one or more local sureties in the like amount;
- (iii) Applicant is permitted to furnish cash bail in the sum of Rs.25,000/-, for a period of ten weeks, in lieu of surety;

- (iv) Applicant shall report the trial Court once in six months and mark his presence;
- (v) Applicant shall stay out of the jurisdiction of Maruti Ali, Ratnagiri, till further orders;
- (vi) Interim Application No.1184 of 2020, stands disposed of accordingly.

(PRAKASH D. NAIK, J.)