

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

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**INTERIM APPLICATION NO.1521 OF 2021
IN
CRIMINAL APPEAL NO.493 OF 2021**

Abdul Husenmiya Shaikh

...Applicant

Versus

The State of Maharashtra & Anr.

...Respondents

....

Mr. Nilesh Tribhuwan with Mr. Bazzin Bharucha, Ms Alisha Pinto, Mr. Jehan Fulwadiwal, Mr. Shreedhar Lad i/b. M/s. White and Brief Advocates and Solicitors for the Applicant.

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

Mrs. Savita Yadav i/b. Ms Manisha Devkar for Respondent No.2.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 2nd SEPTEMBER, 2021.

P.C.:-

By this application under Section 389 of the Code of Criminal Procedure, 1973 the Applicant seeks suspension of substantive sentence imposed by judgment dated 04/03/2021 passed by learned District Judge-2 and Additional Sessions Judge, Thane in Special (POCSO) Case No.194 of 2018 and enlargement on bail.

2. The Applicant was charged for offences under Sections 323, 354, 376, 377 and Section 506 of the IPC and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012. By the impugned judgment, the learned Judge has held the Applicant guilty of

offences punishable under Sections 323, 354 and 376 of the IPC r/w. Section 4 of the POCSO Act. He has been sentenced to undergo rigorous imprisonment for ten years under Section 376 of the IPC and one year under Section 354 of the IPC and six months under Section 323 of the IPC. No separate sentence is imposed under Section 4 of POCSO Act.

3. Charge against the Applicant is that he had committed rape / penetrative sexual assault on a minor girl aged about 8 years of age. The evidence of the victim prima facie indicates that the Applicant was involved in commission of the said crime. The medical evidence also suggests that there was evidence of penetrative vaginal intercourse. Thus, the material on record indicates that the Applicant, who is over 50 years of age has sexually abused the child who was barely 8 years of age as on the date of incident. The offence is not only grave but heinous in nature. There is prima facie material to believe that the Applicant was involved in commission of the crime.

4. Considering the nature of accusations, gravity of offence and severity of punishment, in my considered view this is not a fit case for suspension of sentence and hence, the application is dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)