

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

**INTERIM APPLICATION NO. 1662 OF 2021
IN
CRIMINAL APPEAL NO. 524 OF 2021
WITH
CRIMINAL APPEAL NO. 524 OF 2021**

Sameer Shashikant Jadhav Appellant
v/s.
The State of Maharashtra and anr. Respondents

Mr. Govind Ghogare for the Appellant.
Mr. S.V. Gavand, APP for the State.
Ms. Megha Bajoria for Respondent No.2.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 05th AUGUST, 2021.

P. C. :-

ORDER IN INTERIM APPLICATION NO.1662 OF 2021 :-

. This is an Application under Section 389 of Cr.P.C. for suspension of sentence imposed by judgment dated 25/03/2021 passed by the Extra Joint District Judge & Addl. Sessions Judge, Ratnagiri in Special Case No.19/2018 and enlargement on bail.

2. The Applicant has been held guilty for offences under Sections 363, 376, 504, 506 of the Indian Penal Code and Section 3(a) r/w. 4, Sections 5(i)(j)(ii)(1) r/w. 6 of the Protection of Children from Sexual

Offences (POCSO) Act, 2012 and sentenced to undergo rigorous imprisonment for three years for offence under Section 363 of IPC and to pay fine of Rs.5,000/- in default to undergo simple imprisonment for five months and ten years in respect of offence under Section 376 of IPC and Section 5(i)(j)(ii)(1) r/w. 6 of the Protection of Children from Sexual Offences Act, 2012 and to pay fine of Rs.10,000/- in default to undergo simple imprisonment for six months.

3. Heard Mr. Govind Ghogare, learned counsel for the Applicant, Mr. S.V. Gavand, learned APP for the State and Ms. Megha Bajoria, learned counsel for Respondent No.2 – victim. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

4. The case of the prosecution is that the Applicant had penetrative sexual assault on the victim who was below 18 years of age. The evidence of PW1 prima facie indicate that the victim was below 18 years of age and she is a child within the meaning of Section 2(d) of POCSO Act. The statement of victim prima facie indicate that the Applicant had committed penetrative sexual assault. Her pregnancy was terminated. DNA profiling was carried out to determine the

paternity of the foetus. The report prima facie indicates that the Applicant and the victim are the biological parents of the child. Thus, there is prima facie material on record to indicate that the Applicant had committed penetrative sexual assault against the victim who was below the age of 18 years.

5. Considering the nature and gravity of the offence, this is not a fit case which would justify suspension of sentence. Hence, the Interim Application is dismissed.

ORDER IN CRIMINAL APPEAL NO. 524 OF 2021 :-

6. This Appeal was admitted by order dated 13/07/2021. The Interim Application for suspension of sentence has been rejected. Considering that the matter relates to the sexual offence against a minor, hearing of the Appeal is expedited. Filing of the paper book is dispensed with. Appeal be listed on final hearing board in the week commencing from **06/09/2021**.

PREETI
H JAYANI

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Date: 2021.08.20
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(SMT. ANUJA PRABHUDESSAI, J.)