

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

**INTERIM APPLICATION NO.1373 OF 2020
IN
CRIMINAL APPEAL NO.383 OF 2020**

Ashraf @ AfsarMohd. Imajoddin Shaikh .. Applicant

Vs.

The State Of Maharashtra & Anr. .. Respondents

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Mr. Abdul Hafeez Kotwala i/b Sumaira Legal Asso., Advocate
for Applicant.

Mr. Sushan Mhatre for Respondent No.2.

Mr. S.R. Agarkar, A.P.P. for the State-Respondent.

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**CORAM : PRAKASH D. NAIK, J.
DATE : 29th SEPTEMBER, 2021**

PC.

1. This is an application for suspension of sentence and grant of bail. The applicant is convicted for offences under Sections 4, 8, 12 of the Protection of Children from Sexual Offences (POCSO), 2012. For the offence punishable under Section 4 of POCSO Act, the applicant has been sentenced to suffer RI for 15 (Fifteen) years and to pay fine of Rs.10,000/-. For the offence punishable under Section 8 of POCSO Act, he is sentenced to suffer RI for 7 (Seven) years and to pay fine of Rs.8,000/-. For the offence punishable under Section 12 of POCSO Act, he is sentenced to suffer RI for 3 (three) years and to pay fine of Rs.6,000/-. For the conviction under Section 363

of Indian Penal Code, he is sentenced imprisonment for 7 (Seven) years and to pay fine of Rs.8,000/-. All the sentences are directed to run concurrently.

2. Learned counsel for the applicant submitted that the applicant was on bail during the trial. Initially, he was arrested on 17.03.2015 and granted bail on 01.09.2015. Thereafter, non-bailable warrant was issued on 06.11.2019, which was executed on 14.11.2019. He is in custody since then. The total period of custody undergone by the applicant is about 2 years and 4 months.

3. Learned counsel for the applicant has submitted that the applicant has been falsely implicated in this case. There was dispute on account of payment. There is contradiction in the version of the witnesses. Medical evidence does not support the case of prosecution. The medical case papers indicate that the sexual assault is in respect of old incident. It is the case of the prosecution that immediately after the victim was sexually abused, she was medically examined. There are contradictions between the statements under Sections 161 and 164 of Cr.P.C. There are discrepancies in the evidence of the prosecution witnesses.

4. Learned APP submits that there is sufficient evidence to convict him. The medical case papers indicate that the hymen

was not intact. There is no reason for the complainant to falsely implicate the applicant. Victim was aged about 8 years at the time of incident. Some minor discrepancies would not demolish the prosecution case. He also drew my attention to paragraph 32 of the impugned judgment wherein it is mentioned that the clothes of the victim and the accused were forwarded for Forensic Science Laboratory (for short "FSL"). As per FSL report, two blood strains were found on the top of the victim. Hymen strains were found on jeans of accused. The accused admitted that the Chemical Analysis Report could not give explanation about availability of semen on his jeans.

5. Learned Advocate Mr. Mhatre appearing for the complainant submitted that there is sufficient evidence to convict the appellant. There is consistency in the version of the victim about the sexual assault. There is no suggestion put to the witnesses to substantiate his defence. The medical case papers clearly mention that hymen was not intact. The submissions of the applicant is to be appreciated at the time of appreciating evidence when the appeal would be heard finally.

6. Heard both sides. I have perused the evidence. It is contended by learned counsel for the applicant that there are contradictions in the statement under Section 164 of Cr.P.C. On perusal of the statement it is apparent that there is consistency in the statement of victim that she was sexually

assaulted. It is also pertinent to note that contradictions, if any, were not put to the witnesses. Suggestions were not put to the witnesses. At this stage, no finding can be given in favour of applicant. The victim was 8 years old at the time of incident. She has categorically referred to the sexual assault. Although, the applicant was on bail during the trial, considering the nature of evidence, no case for suspension of sentence and grant of bail is made out. Hence, following order:-

ORDER

- (i) Interim Application No.1373 of 2020 stands rejected.
- (ii) Hearing of appeal is expedited.
- (iii) It is clarified that the observations made in this order are only for considering the application for suspension of sentence and while finally adjudicating the appeal Court may not be influenced by these observations.
- (iv) Application is disposed of.

(PRAKASH D. NAIK, J.)