

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**INTERIM APPLICATION NO.1883 OF 2021
IN
CRIMINAL APPEAL NO.663 OF 2021**

Sunilkumar Mohanlal Sharma .. Applicant

v/s.

The State of Maharashtra & Anr. .. Respondents

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Mr. Lokesh D. Zade, for the Applicant.

Mrs. P.P. Shinde, APP, for the State.

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**CORAM: NITIN JAMDAR &
G.A. SANAP, JJ.**

DATE : 7 SEPTEMBER 2021.

P.C:-

Heard learned Counsel for the Applicant and the learned APP. This is an application for suspension of sentence and to release the Applicant on bail.

2. The Applicant is convicted under Section 376 of Indian Penal Code, read with Section 6 of Protection of Children from Sexual Offences Act and is sentenced to suffer imprisonment for life. The Applicant is the father of the 12 years old survivor child. Respondent No.2 is the mother. Though at the time of admitting the appeal notice

was issued to Respondent No.2, and it is not yet served, having heard the learned Counsel for the Applicant, we have found that it is not a case for grant of bail and, therefore, it is not necessary to await representation on behalf of Respondent No.2, as the case is also ably put up by learned APP. The reason for our conclusion as to why the Applicant is not entitled to bail is as follows.

3. The case of the prosecution is that on 08.03.2013, the child had not gone to school. She was alone at home with her father, the Accused. She was sleeping. The accused had gone out and came in drunk condition and slept by the side of the child. The child woke up to see that Accused had removed his and her clothes and the accused committing an act of cunnilingus with her and was lying on her person. He kept his hand on her mouth so that she could not shout and moved his hand on her body. The child pushed the accused and started crying loudly. The neighbour-P.W.3 knocked at their door. The child opened the door after putting on her clothes when the accused went to wash his mouth. When the neighbour came inside, the accused ran away from the spot. Information was given by the neighbour immediately and the child was sent to the examination by the doctor and after recording of the evidence and receipt of the medical evidence, trial was conducted and the conviction and sentence as above was recorded.

4. The child has deposed regarding the incident. She had also deposed that such sexual acts were committed by the Applicant even in the past. There is nothing in the cross-examination that will discredit the version of the child. Similarly, P.W.2-mother and P.W.3-the neighbour, have deposed regarding the incident and there is nothing in their cross-examination that will assist the defence. Medical evidence is on record, which shows that the child was subjected to a sexual assault.

5. Learned Counsel for the Appellant sought to contend that the Applicant, according to the prosecution, was drunk and did not perhaps know what he was doing. This cannot be a ground to take a lenient view, considering the act committed and the relationship.

6. Having considered the matter in totality, no case for grant of bail is made out.

7. The application is rejected.

(G.A. SANAP, J.)

(NITIN JAMDAR, J.)