

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

**INTERIM APPLICATION NO. 1907 OF 2021
IN
CRIMINAL APPEAL NO. 283 OF 2021
WITH
CRIMINAL APPEAL NO. 283 OF 2021**

Inayatulla Rojan Kureshi Appellant/Applicant
v/s.
The State of Maharashtra and anr. Respondents

Mr. Akash Kavade for the Appellant.
Mr. S.V. Gavand, APP for the State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 05th AUGUST, 2021.

P. C. :-

ORDER IN INTERIM APPLICATION NO. 1907 OF 2021 :-

. This is an Application under Section 389 of Cr.P.C. filed by the aforesaid Applicant for suspension of sentence imposed by judgment dated 20/02/2021 passed by the Extra Joint Addl. Sessions Judge, Pune in Special Case (POCSO) No.592/2019 and enlargement on bail.

2. By the impugned judgment, the Applicant has been held guilty for offences punishable under 376, 376(2), 323, 506(1) of the Indian Penal Code and under Sections 4, 8, 12 of the Protection of Children

from Sexual Offences (POCSO) Act, 2012 and sentenced to undergo rigorous imprisonment for 30 years and to pay fine of Rs.10,000/- in default to undergo rigorous imprisonment for one year.

3. The case of the prosecution is that the Applicant had committed aggravated penetrative sexual assault on his minor daughter. The victim and her mother have not supported the case of the prosecution and they were extensively cross-examined by the prosecution. In the cross-examination, the victim has admitted having lodged the FIR against the Applicant. She has admitted having signed the FIR and had further admitted that the FIR was recorded as per her narration. The complaint records that the Applicant had sexual intercourse with the victim resulting in her pregnancy and subsequent miscarriage. The mother of the victim has also admitted in her cross-examination that the victim had told her that the Applicant used to touch her private parts and that he would threaten her whenever she resisted the act. She has further admitted that the victim had told her that the Applicant had sexual intercourse with her several times and that she had been to 'Stri Shakti Jagran' to complain about the incidence. She has stated that she was advised to send the victim to the house of her maternal uncle till action was taken against the Applicant. It is true that the

victim and her mother have made several contradictory statements. The learned Judge has taken note of the fact that the Applicant used to beat the victim and her mother and that they were under tremendous pressure.

4. The evidence of PW3 – Dr. Sadia Shaikh also prima facie indicates that the victim had visited her clinic with her mother. She complained of stomach ache and vomiting. PW3 performed pregnancy test and confirmed that the victim was pregnant. The evidence of this witness reveals that the mother of the victim had expressed that her husband i.e., the Applicant might have been responsible for her pregnancy and had requested PW3 to abort the foetus. PW3 claims that she referred the victim to the Sasoon Hospital.

5. The evidence on record further reveals that upon registration of the crime, the victim was referred to Sasoon Hospital. She was examined by PW4 – Dr. Khusboo Goel. The evidence of this witness reveals that the victim had given history of penetrative sexual assault by the Applicant. The medical evidence prima facie corroborates allegation of penetrative sexual assault.

6. The gravity of the offence, severity of punishment and the

relationship between the Applicant and the victim does not justify suspension of sentence. Hence, the Interim Application is rejected.

ORDER IN CRIMINAL APPEAL NO.283 OF 2021 :-

7. Heard. Admit. Call for the record and proceedings. Paper book to be filed within six months. Learned APP waives service on behalf of the Respondent – State. Applicant/Appellant to take steps to serve Respondent No.2 by private service as well as by RPAD.

(SMT. ANUJA PRABHUDESSAI, J.)