

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

**CRIMINAL APPEAL NO.773 OF 2021
WITH
INTERIM APPLICATION NO.2293 OF 2021
IN
CRIMINAL APPEAL NO.773 OF 2021**

Akil Gulab Maniyar ...Applicant/Appellant

Versus

The State of Maharashtra & Anr. ...Respondents

....

Mr. Swapnil Walve for the Applicant.

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

Ms Savita Yadav for Respondent No.2 (appointed Advocate)

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 20th OCTOBER, 2021.

P.C.:-

CRIMINAL APPEAL NO.773 OF 2021:-

Date of today's hearing is duly intimated to the Respondent No.2. She has requested for advocate from legal aid panel. Ms Savita Yadav, learned counsel on legal aid panel, is appointed to represent Respondent No.2 in the appeal as well as in the application.

2. Heard. Admit. Mr. S.V. Gavand, learned APP waives service on behalf of Respondent No.1 and Ms Savita Yadav, learned counsel waives service on behalf of Respondent No.2. Call for the record and proceedings. Paper book to be filed within a period of six months.

INTERIM APPLICATION NO.2293 OF 2021:-

3. This is an application filed under Section 389 of the Code of Criminal Procedure, 1973 for suspension of sentence imposed vide judgment dated 05/08/2021 passed by learned Additional Sessions Judge and Special Judge in Sessions Case (POCSO) No.418 of 2018 and for enlargement of the Applicant on bail.

4. By the impugned judgment, the learned Judge held the Applicant guilty of offences punishable under Section 377 and 506 part-I of the IPC and Section 3 r/w section 4 and Section 5 r/w section 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO) and sentenced to suffer rigorous imprisonment for 10 years with fine of Rs.5,000/- i/d to undergo simple imprisonment for a term of three months.

5. Heard learned counsel for the Applicant, learned APP for the Respondent No.1-State and learned counsel for Respondent No.2. Perused the records and considered the submissions advanced by the learned counsel for the respective parties.

6. Charge against the Applicant was that he had committed penetrative sexual assault against a child, who was 8 years of age and a child within the meaning of Section 2(d) of POCSO. The evidence of the

victim prima facie reveals that on 06/10/2018 at about 7.00 p.m. while he was riding his bicycle, the Applicant took him to the terrace under the pretext of teaching him to play a game. He has deposed that after taking him to the terrace, the Applicant removed pant of the victim and took his penis in his mouth. He has stated that thereafter the Applicant also touched his penis to the anus of the victim. The victim has stated that the Applicant had threatened him not to disclose the incident to any one.

7. The victim has stated that he had disclosed the incident to his mother. The evidence of PW2-mother of the victim also prima facie indicates that the victim had told her that the Applicant had taken him to the terrace and had committed penetrative sexual assault.

8. The evidence on record prima facie indicates that the Applicant had committed penetrative sexual assault within the meaning of section 3(a) and (b) of POCSO, on the victim who was below 12 years of age. Considering the nature of the offence and the evidence in support thereof as well as the societal interest, in my considered view this is not a fit case to suspend the sentence and to enlarge the Applicant on bail. Hence, the application is dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)