

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

**INTERIM APPLICATION NO. 2374 OF 2021
IN
CRIMINAL APPEAL NO. 58 OF 2021
with
INTERIM APPLICATION NO. 2376 OF 2021
IN
CRIMINAL APPEAL NO. 58 OF 2021**

Ajij Abdul Khan

..Applicant

v/s.

State of Maharashtra & Anr.

..Respondent

Mr. B.J.Shaikh for the Applicant.

Mr. P.H. Gaikwad, APP for the Respondent-State.

Ms. Priyanka Chavan, Advocate appointed for Respondent No.2.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 27th OCTOBER, 2021.

P.C.

1. The learned APP states that Respondent No.2 has been duly served and that she has requested for Advocate from Legal Aid Panel. Ms. Priyanka Chavan, Advocate from the Legal Aid Panel is appointed to represent the Respondent No.2.
2. By these applications filed under Section 389 of Cr.P.C. the Applicant has sought suspension of sentence and release on bail.
3. Heard Mr. Shaikh, learned Counsel for the Applicant. He states

that the Applicant is in custody since 21.07.2016. He claims that there is no prima facie material to show the involvement of the Applicant in the aforesaid crime. There are no eye witnesses to the incident and that the Applicant has been falsely implicated.

4. Per contra, Ms. Chavan, the learned Counsel for the Respondent No.2 submits that the testimony of the victim clearly proves the involvement of the Applicant in the said crime. She submits that the victim has identified him in the Court. The offence is of serious nature and that there was no animosity between the Applicant and the mother of the victim to falsely implicate him in such a serious crime.

5. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties.

6. The victim is a 8 years old child, a Senior Kg student, studying in MCGM School. Her evidence prima facie reveals that on the relevant date she had been to school at 8.30 a.m. After completing her studies, she went to the wash room. One person came into the washroom, closed the door from inside and inserted his penis in her mouth. She ran out of the washroom. She states that she was too scared to inform the teacher about the incident. However, when her mother came to take her home, she narrated the incident to her

mother. She had stated that she had seen the said person earlier in the school as he used to come to distribute tiffin to the teachers. This witness has identified the accused before the Court.

7. The evidence of the Class Teacher PW3-Kavita also reveals that on the relevant date when she had come out of the class room at about 11.30 to 12.00 p.m., to throw some waste papers she had noticed one person standing near the water cooler and when questioned, the said person told her that he had come to drink water. She has identified the accused as the same person who was seen near the water cooler.

8. PW4 Anita Kamble is working with social organization who prepares eatables and distributes to the schools in the nearby areas. She has stated that the Applicant was a driver of the tempo used for distribution of the eatables . She has stated that on 21.07.2016 she had gone with the Applicant to MCGM School. She had asked the Applicant to carry tiffins on the second floor as she was not feeling well.

9. PW5 Mahesh Sawant, watchman, has deposed that in the absence of one Bharat Gade, the Applicant used to come to the school to distribute snacks. The testimony of this witness also prima facie proves the presence of the Applicant in the school on the

relevant date.

10. The Testimony of PW7-owner of tempo driver also prima facie proves that the Applicant was a driver of the tempo which was used by Adarsh Grihanirman Sanstha for distributing snacks to various schools.

11. The evidence on record prima facie proves the presence of the Applicant in the school on the relevant date. The testimony of the Victim also proves that the Applicant had inserted his penis in her mouth. The offence is of serious nature. Considering the gravity of the offence, as well as keeping in mind the societal interest, in my considered view, this is not a case which would justify suspension of sentence and release of Applicant on bail. Hence the Application is dismissed.

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(ANUJA PRABHUDESSAI, J.)