

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

**CRIMINAL APPEAL NO. 832 OF 2021
WITH
INTERIM APPLICATION NO. 2426 OF 2021
WITH
INTERIM APPLICATION NO. 2424 OF 2021
IN
CRIMINAL APPEAL NO. 832 OF 2021**

Nikhil Ashok Bhole

.... Appellant

v/s.

The State of Maharashtra

.... Respondent

Mr. D.H. Kumthekar for the Appellant/Applicant.

Mr. PH. Gaikwad, APP for the State.

Mr. Liman, PSI, Chembur Police Station, present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 12th OCTOBER, 2021.

P. C. :-

ORDER IN CRIMINAL APPEAL NO. 832 OF 2021 :-

. Heard. Admit. Call for the record and proceedings. Learned APP waives service on behalf of the Respondent – State. Paper book to be filed within a period of six months.

ORDER IN INTERIM APPLICATION NOS. 2424/2021 & 2426/2021 :-

2. These are the Applications under Section 389 of Cr.PC. for

suspension of substantive sentence imposed by judgment dated 20/08/2021 in Special Judge under P.O.C.S.O. Act, Mumbai in Special Case No.248/2017 and to release the Applicant on bail.

3. By the impugned judgment, the Applicant has been held guilty of offences punishable under section 5(k) punishable under Section 6 of Protection of Children from Sexual Offences (POCSO) Act, 2012 and has been sentenced to undergo rigorous imprisonment for ten years with fine of Rs.5,000/- in default to undergo simple imprisonment for three months. No separate sentence has been imposed under Section 377 of the Indian Penal code in view of the sentence imposed under Section 6 of POCSO Act.

4. Heard Mr. D.H. Kumthekar, learned counsel for the Appellant and Mr. P.H. Gaikwad, learned APP for the State. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

5. The Applicant was prosecuted for offences under Section 377 and 506 of the Indian Penal Code and Section 4 and 8 of POCSO Act, 2012. The crime against the Applicant was registered pursuant to the first

information report lodged by the father of the victim, a child within the meaning of section 2(d) of the POCSO Act and who was intellectually disabled. The first informant had alleged that in August, 2016, the victim had not returned home and when he inquired with him as to why he was late, he had told that the Applicant herein had taken him to one toilet situated in front of Axis Bank, Siddharth Colony, Chembur and had subjected him to carnal intercourse. It was also alleged that the Applicant had threatened the victim not to disclose the incident to anyone. The victim subsequently complained of pain in anus and the first informant took him to the hospital. The Doctors informed the complainant that the cause of pain is due to unnatural sex. The complainant thereafter lodged the first information report against the Applicant.

6. The evidence of the victim prima facie reveals that the Applicant had subjected him to carnal intercourse. The evidence of PW2 – Dr. Gajanan Govindrao Kondawar also prima facie reveals that there was evidence of “recent full act of unnatural sexual intercourse with dilatation of the anus because of introduction of a full sized erect adult penis”. The medical evidence prima facie supports the case of the prosecution. The offence is of serious and heinous nature. Considering

the gravity of the offence, the evidence in support thereof, and also keeping in mind the societal interest, this is not a fit case for suspension of sentence and/or to release the Applicant on bail. Hence, the Interim Applications are dismissed.

**PREETI
H JAYANI**

(SMT. ANUJA PRABHUDESSAI, J.)

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PREETI H JAYANI
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