

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

**INTERIM APPLICATION NO. 2613 OF 2021
IN
APPEAL NO. 878 OF 2021**

Chandrashekhar @ Pandu
Mahadev Keni

..Applicant

v/s.

The State of Maharashtra & Anr.

..Respondent/s

Mr. Amol P. Mhatre a/w. Sameer Mhatre for the Applicant.

Mr. N.B.Patil, APP for the Respondent-State.

Ms. Priyanka Chavan for the Respondent No.2.

Mr. S.A.Sawant, ASI, Wagle Estate Police Station.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 23rd NOVEMBER, 2021.

P.C.

1. By this application filed under Section 389 of Cr.P.C., the applicant herein has sought suspension of sentence imposed by judgment dated 04.08.2021 in Special Case (POCSO) No.100 of 2018. By the impugned judgment the Special Judge has held the Applicant guilty of offences under Section 376, 342 of Indian Penal Code and under Section 3(b) punishable under Section 4, and Section 5(m) punishable under Section 6 of the POCSO Act, 2012. The Applicant has been sentenced to undergo rigorous

imprisonment for 10 years and to pay fine of Rs.5000/- i.d. rigorous imprisonment for two months for offence under Section 6 of the POCSO Act.

2. Heard the learned Counsel for the applicant and the learned APP for the State, and learned Counsel for the Respondent No.2. Perused the record and considered the submissions advanced by the learned Counsels for the respective parties.

3. It is the case of the prosecution that the Applicant has committed penetrative sexual assault on the victim, a five years old girl. In this regard the evidence of the victim (PW2) reveals that in the year 2018, she had gone to the house of her friend and while returning home, the Applicant caught hold of her, took her to his house and touched her private parts. The evidence of this witness does not prima facie indicate that the Applicant had committed penetrative sexual assault within the meaning of Section 3 of the POCSO Act. Even if the statement of this witness is taken at the face value and accepted in its entirety, the same would at the most prima facie constitute an offence of

‘sexual assault’ within the meaning of Section 7 of the POCSO Act, which is punishable with imprisonment for a term not less than 3 years but which may extend upto 5 years.

4. Ms. Chavan, learned Counsel for the Respondent No.2 submits that the evidence of PW8 Dr. Shobhana prima facie proves that the victim was subjected to penetrative sexual assault. It is to be noted that PW8 Dr. Shobhaba has deposed that she had examined the victim. She has stated that there was redness and bluish discoloration of labia majora. There was an abrasion of 0.2 on left side and redness present on labia minora. Introitus /vagina- bruise and redness around introitus present with normal blood stain discharge. There was redness and bluish discoloration to hymen. There was redness in urethra. She has stated that overall findings were consistent with genital assault. In her cross examination she has stated that redness could be due to dryness of skin and itching. Burning sensation could be due to urinary infection and redness and bluish discoloration is possible due to urinary infection. In this regard it is pertinent to note that PW2 has admitted that she had pain in her private parts even before she

had been to the house of her friend. She stated that she had been to private hospital because of pain in her private part. The statement, prima facie raises a doubt that the redness, abrasion and discoloration of genitals could be pre-existing, possibly due to urinary infection.

5. It is also to be noted that the Applicant is in custody for a period of over three years. Considering the above facts and circumstances, in my considered view, this is a fit case to suspend the sentence and to enlarge the Applicant on bail pending the disposal of the appeal. Hence the application is allowed on the following terms and conditions:-

- i) Substantive sentence imposed against the Applicant by judgment dated 04.08.2021 in Special Case (POCSO) No.100 of 2018 is suspended pending hearing of the appeal;
- ii) The Applicant is ordered to be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- (Rupees Twenty-five Thousand Only) with one or two solvent sureties in the like amount, to the satisfaction of the Trial Court;
- iii) The applicant shall report to the Trial Court once in two

months on the day/ date specified by the Trial Court, till the Appeal is finally disposed on;

(iv) The applicant shall keep the trial Court informed of his current address and mobile/contact numbers and/or change of residence or mobile details, if any, from time to time.

v) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file application seeking cancellation of bail.

. Application is accordingly disposed of.

PRASANNA P
SALGAONKAR

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signed by
PRASANNA P
SALGAONKAR
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(ANUJA PRABHUDESSAI, J.)