

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

**CRIMINAL APPLICATION NO. 1433 OF 2019
IN
CRIMINAL APPEAL NO. 1064 OF 2018**

Sandip Shivaji Kumbhar .. Applicant
V/s.

The State of Maharashtra & Anr. ..Respondents

Mr. Satyawrat Joshi a/w Nitesh Mohite for the Applicant.
Mr. S.R. Agarkar, APP for the Respondent/State.
Mr. Sushant Mhatre for the Complainants.

CORAM : C.V. BHADANG, J.

DATE : 18 NOVEMBER, 2021

P.C.

1. This is an application for suspension of sentence and for bail.
The applicant has been convicted under Section 376 (2) (i) (n) of
IPC and Section 3, 4 and Section 5 punishable under Section 6 of
the Protection of Children from Sexual Offences Act, 2012.

2. The applicant has been sentenced to suffer rigorous
imprisonment for 10 years and to pay fine of Rs.2,000/- and in
default to suffer simple imprisonment for two months.

3. The allegation is that the applicant was serving as a driver on the school bus of the school where the victim was studying in first standard. At the relevant time she was aged about 6 years. According to the prosecution, the applicant used to ask all other girls to get down from the bus and used to insert his finger in her private parts and used to press her private part. The mother of the girl had noticed swelling and redness on the private part of the victim, whereupon the victim disclosed the said incident.

4. I have heard the learned counsel for the applicant and the learned APP as well as the learned counsel for the respondent/complainant.

5. It is submitted by the learned counsel for the applicant that the material part of the evidence about any aggravated penetrative sexual assault is an omission, both before the Investigating Officer when the statement of the victim was recorded and also before the Medical Officer while narrating the history.

6. With the assistance of the learned counsel for the parties, I have gone through the evidence of the victim, her mother and the Medical Officer.

7. Prima facie, it appears that material part of the evidence regarding their being a penetrative sexual assault is by way of an omission over the police statement and the medical history. A perusal of the evidence of the Medical Officer shows that the Medical Officer had found 'perihymenal inflammation' on the basis of clinical examination which according to the Medical Officer is evidence of non penetrative assault.

8. The learned counsel for the applicant pointed out that in that event the offence cannot fall under Section 5(l)(m). It is submitted that after his conviction, the applicant is in custody from July, 2018 and has completed more than 3 years of imprisonment.

9. The learned APP submitted that in the event the sentence is suspended, the applicant be directed not to enter the jurisdiction of Warje Malwadi police station.

10. In the result, the following order is passed:

(i) The substantive sentence of imprisonment awarded to the applicant is hereby suspended upon applicant furnishing a PR Bond

in the sum of Rs.25,000/- with one or two solvent sureties in the like amount and on payment of fine, if not already paid.

(ii) The applicant shall not enter the jurisdiction of police station Warje Malwadi until further orders.

(iii) The applicant shall attend the Special Court at Pune once in every month. First of such attendance shall be made on 06.12.2021.

(iv) Criminal application is disposed of in the aforesaid terms.

(v) Parties to act on an authenticated copy of this order.

(C.V. BHADANG, J.)