

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

**CRIMINAL APPLICATION NO. 1925 OF 2018
WITH
CRIMINAL APPLICATION NO. 1926 OF 2018
IN
CRIMINAL APPEAL NO. 1431 OF 2018**

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Kasim Mohd. Amin Shaikh .. Applicant
V/s.

The State of Maharashtra ..Respondent

Mr. Ramesh Tripathi for the Applicant.

Mr. R. M. Pethe, APP for the Respondent/State.
P.I. Madhukar Sanap, Unit 8, Crime Branch Mumbai.

CORAM : C.V. BHADANG, J.

DATE : 03 DECEMBER, 2021

PC.

1. Heard for some time. These are applications for suspension of sentence and for bail. The learned counsel for the applicant pointed out from the evidence of victim that she had not supported the prosecution. It is submitted that the evidence of mother of victim of having seen the applicant indulging into the act with the victim, is also not acceptable being highly improbable.

2. The learned counsel has taken me through the spot panchanama in order to point out that the parties are residing in a chawl which is ground plus two storey and the applicant is residing on the top floor. The complainant and the victim was residing on the first floor. It is submitted that situation of the spot is such that happening in the room of the applicant cannot be seen from outside. He pointed out that the mother of the victim has also admitted that the victim has accidentally fallen down from a swing and had sustained injury to her private part. It is submitted that applicant is residing along with his family comprising of his wife and children and it is highly improbable that the applicant would indulge into the act alleged with the minor in his house. He pointed out that it has come on record that there was a quarrel between mother of the victim and the wife of the applicant, which is the reason for false implication.

3. Apart from merits, the learned counsel for the applicant pointed out that the incident is alleged to have taken place in August 2016 when Section 376(2)(i) of IPC (as it stood then before its deletion in the year 2018) and Section 6 of the Protection of Children from Sexual Offences Act (as it stood prior to its amendment in the year 2019) invited minimum punishment of 10

years and not 20 years as imposed by the learned Special Judge. The learned counsel however did not dispute that the applicant was an under trial prisoner and has spent more than 5 years in jail. However, considering the fact that the appeal is ready for final hearing, the learned counsel for the applicant made an alternate submission for expediting the appeal.

4. In the circumstances, the Criminal Applications are disposed of at this stage.

5. The Appeal be added to the final hearing board commencing from 06.12.2021.

(C.V. BHADANG, J.)