

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL INTERIM APPLICATION NO.879 OF 2019
IN

RAJESH
VASANT
CHITTEWAN

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CRIMINAL APPEAL NO.723 OF 2019

Laxman Govind Verma ... Applicant

Versus

The State of Maharashtra
(At the instance of Sr. PI,
Wadala P.S., C R. No.79/2017)
And Another

... Respondents

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Mr. S.P. Singh for the Applicant.

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

Ms. Ameeta Kuttikrishnan for Respondent No.2.

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**CORAM : SMT. ANUJA PRABHUDESSAI, J.
(Through Video Conferencing)**

DATE : 3 SEPTEMBER 2021

P. C. :

. This is an application under Section 389 of Code of Criminal Procedure for suspension of sentence imposed by the judgement dated 1 April 2019 by the learned Special Judge, Greater Mumbai in POCSO Case No. 328 of 2018. By the impugned judgment, the learned Special Judge, Greater Mumbai, has held the Applicant guilty of offence under Sections 354, 354-A of Indian Penal Code and

Section 10 of the Protection of Children from Sexual Offences Act, 2012 sentenced him to undergo imprisonment for Five years and to pay a fine of Rs.10,000/- (Rs.Ten Thousand Only) in default rigorous imprisonment for one month.

2 It is the case of the prosecution that on 11 May 2017, the victim had informed her mother that she was having pain in her private parts. Upon being questioned, the victim narrated that she had gone to the neighboring room, where painting work was going on. The Applicant, who is a painter, made her sit on his lap and thereafter touched her private parts. She also informed her that the co-accused had slapped her. The mother of the victim lodged FIR on 12 May 2017. On the basis of the report, Crime No.79 of 2017 came to be registered and the investigation was put in motion. The Investigating Officer recorded the statement of the victim and upon completion of investigation, filed a charge-sheet against the Applicant and the co-accused.

3 The learned Special Judge has held the Appellant guilty of the offence mainly on the basis of the evidence of the victim, who at the time of incident, was three years of age. The record indicates that on the date of recording her evidence, she was six years of age. The learned Special Judge has not put any questions to the witness to ascertain whether she had capacity to understand and give rational answers. It is also pertinent to note that the victim in her examination-in-chief, stated that she had forgotton about the incident

and that she could not recollect the incident. She was cross examined by the learned prosecutor and in the cross examination, she has admitted the suggestion that the Applicant herein had touched her private part. *Prima facie* it is doubtful whether the victim, a child of tender years was a competent witness. Considering the nature of evidence and the fact that the maximum terms of sentence is of 5 years years, in my considered view this is a fit case to suspend the sentence pending disposal of the appeal and enlarge the Applicant on bail.

4 Hence, the Interim Application is allowed on the following terms and conditions :

- (i) The substantive sentence is suspended pending the hearing of the appeal ;
- (ii) The Applicant shall be released on cash bail in the sum of Rs.20,000/- for a period of four weeks ;
- (iii) The Applicant shall within the said period of four weeks, furnish P.R. Bond in the sum of Rs.20,000/- (Rs. Twenty Thousand Only) with one or two sureties in the like amounts ;
- (iv) The Applicant shall report to the trial court, once in six months on the day/date specified by the trial Court, till

the appeal is finally disposed of ;

- (v) 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;
 - (vi) 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 an application seeking cancellation of bail;
- 5 The Interim Application stands disposed of in the above terms.

(SMT. ANUJA PRABHUDESSAI, J.)