

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APPA) NO. 606/2021 IN
CRIMINAL APPEAL NO. 443/2021

Abdul Mujjamil Abdul Rashid .vs. State of Maharashtra through PSO P.s.
Rajura, Tq. Rajura, Dist. Chandrapur.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. A. Subhan, Advocate for applicant.
Mr. V. A. Thakare, A.P.P. for non applicant-State.

CORAM : V.M. DESHPANDE, J.
DATED : DECEMBER 9, 2021

This is an application for suspension of substantive jail sentence and for grant of bail. The applicant was convicted by learned Additional Sessions Judge, Chandrapur for the offence punishable under Section 376 (2) of the Indian Penal Code and Sections 4 and 6 of the Protection of Children From Sexual Offences Act. The applicant is directed to suffer imprisonment for seven years and payment of Rs.5,000/- for the offence under Section 4 of the POCSO Act. In view of Section 42 of the POCSO Act, the applicant was sentenced to suffer rigorous imprisonment for ten years and to pay a fine of Rs.5,000/-, instead of section 376(2) of the IPC.

This appeal was admitted on 28.10.2021 and record and proceedings were called. Accordingly, record and proceedings are before me.

Heard Mr. Abdul Subhan, learned counsel for the applicant and Mr. Thakare, learned A.P.P. for non applicant-State and also perused the necessary documents and evidence to decide this application.

There is no dispute about age of the victim and also that at the relevant time, she was 4 ½ years old. It is not the prosecution case that applicant had sexual intercourse with the girl. According to prosecution, the offence is complete because the applicant has touched the private part of the victim girl.

It appears from the evidence as brought on record that there is no dispute that the applicant has lifted the girl at the relevant time when the girl was playing on the road. It is also not in dispute that the applicant and the family of victim are residents of the very same locality. According to the mother of the victim, she noticed that the applicant, after lifting the minor girl, put his hand inside her frock. This particular evidence of the mother is found to be a proved omission. Medical report is also there. It does not show even anything unusual to the private part of the victim girl.

The defence of the appellant/applicant was that when he was standing on the road and the victim was playing, he noticed a bullock-cart rushing towards the girl and therefore he lifted the girl. Not only that, he entered into the witness box to prove this defence. He also examined his wife, who was sweeping the courtyard at

the relevant time. From her evidence, nothing could be brought on record to disbelieve her statement, at least prima facie.

The applicant was on bail during the trial and he has not misused the liberty granted to him.

In that view of the matter, I pass the following order.

ORDER

- (i) The application is allowed.
- (ii) The substantive jail sentence imposed upon applicant-Abdul Mujjamil Abdul Rashid in Special (POCSO) Case No.12/2016 shall stand suspended during the pendency of the present appeal.
- (iii) The applicant be released on bail on his executing P.R. Bond in the sum of Rs.10,000/- with one solvent surety in the like amount.
- (iv) The applicant shall not give any type of threats to the victim or to her family.
- (v) The applicant is directed to remain personally present before the Court at the time of final hearing of the appeal.

The application is disposed of.

JUDGE