

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

**INTERIM APPLICATION NO.1339 OF 2022
IN
CRIMINAL APPEAL NO.428 OF 2022**

Atmaram Digambar Garud Applicant
Versus
The State of Maharashtra & Anr. Respondents

Mr. Nikhil Wadikar, Advocate a/w. Faiza Shaikh, for the Applicant.

Mr. R.M. Pethe, APP for the Respondent No.1-State.

Mr. Sanjog S. Parab, Advocate a/w. Sulabha V. Rane, Mohan Rao, for the Respondent No.2.

**CORAM :SARANG V. KOTWAL, J.
DATE : 10th AUGUST, 2022**

P.C. :

1. This is an application for bail during pendency of Criminal Appeal No.428/2022. The applicant was convicted for commission of offences punishable under Sections 5(n), 5(l) and 5(j)(ii) read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and under Sections 376(2)(i), 376(2)(n), 376(2)(f) and 506 of the Indian Penal Code.

2. The applicant was sentenced to suffer R.I. for ten

years and to pay fine of Rs.10,000/- and in default of payment of fine to suffer S.I. for two months for the offence punishable under Section 6 read with Section 5(n), 5(l), 5(j) (ii) of the POCSO Act. He was convicted and sentenced under Section 506 of IPC for one year R.I. No separate sentence was imposed under Section 376 of IPC in view of the sentence imposed under Section 6 of the POCSO Act.

3. Heard Shri Nikhil Wadikar, learned counsel for the applicant, Shri R.M. Pethe, learned APP for the Respondent No.1-State and Shri Sanjog Parab, learned senior counsel for the Respondent No.2.

4. The prosecution case is that the date of birth of the victim was 9.11.2002. The date of incident, as mentioned by the victim in her deposition, was somewhere in the year 2017. Therefore, at that point of time, she was below sixteen years of age.

5. The victim is examined as PW-1 during trial. She has deposed that the applicant was her cousin. The deposition mentions that at least on three occasions in

September, October and November, 2017 he had committed rape on the victim against her will. His act resulted into her pregnancy and she delivered a baby boy in April, 2018. When her pregnancy was detected, the offence was registered and the applicant was arrested. The investigation was carried out. During trial, the victim was the main witness.

6. Apart from that, there is evidence of school record. The bonafide certificate from the school record confirmed her date of birth. The radio-logical examination also divulged that the victim was below sixteen years of age at the time of incident.

7. The impugned judgment shows the D.N.A. report produced on record at Exhibits-7 & 8 mentioning that the victim and the applicant were the biological parents of the new born baby of the victim. Thus, there is clinching evidence against the applicant.

8. Learned counsel for the applicant submitted that the original birth certificate of the victim was not produced.

The school record is not reliable. The dates mentioned by the victim in her deposition and her actual pregnancy do not match.

9. Learned counsel for the respondent No.2 as well as learned APP for the State opposed this application.

10. I have considered these submissions. In view of the clinching nature of evidence against the applicant and the length of sentence imposed on him, no case for grant of bail during pendency of appeal is made out. Hence, the application is rejected.

(SARANG V. KOTWAL, J.)

Deshmane (PS)