

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

**INTERIM APPLICATION NO. 2925 OF 2021
IN
CRIMINAL APPEAL NO. 978 OF 2021**

Md. Noushad Md. Shamshad Abbassi ...Applicant

Versus

The State of Maharashtra & Anr. ...Respondents

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Mr. Ritesh Thobde a/w. Mr. Sagar S. Tambe for the Applicant.
Ms. S.V. Sonawane, APP for the Respondent -State.
Ms. Shraddha Sawant for Respondent No.2.
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**CORAM : PRAKASH D. NAIK, J.
DATED : APRIL 01, 2022**

P.C. :

1. This is an application for suspension of sentence and grant of bail pending Criminal Appeal No. 978 of 2021.
2. The applicant has been convicted for the offence punishable under Section 377 of the Indian Penal Code ("the IPC") and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short, "the POCSO"). He has been sentenced to undergo imprisonment of seven years with fine of Rs. 2,000/- and ten years imprisonment with fine of Rs. 5,000/-

on each count respectively vide judgment and order dated 17th November, 2021.

3. The prosecution case is that the victim boy aged about 10 years, was subjected to unnatural sexual assault by the applicant. The incident had occurred on 1st June, 2017. FIR was registered. The applicant was arrested on 2nd June, 2017. On completing investigation, charge-sheet was filed.

4. Learned counsel for the applicant submitted that the applicant has been falsely implicated in this case. There is no evidence to convict him. The age of victim was not proved. There were no injuries on the person of victim. No stains of oil were found on the clothes of victim and applicant. The mother of victim was not examined. The evidence of witnesses suffers from contradictions. The medical certificate is silent about unnatural sex. The medical certificate does not indicate that there were any injuries to anus. The Chemical Analyzer Report do not support the prosecution case. The prosecution has brought on record bonafide certificate, which is not a proof to determine the age of victim. The applicant was on bail during the trial. He has not misused the facility of bail.

5. Learned APP and learned counsel appointed to represent respondent No.2 have opposed this application. It is submitted that the victim was a minor boy. There is no reason to disbelieve his version. There is presumption under Section 29 of the POCSO Act. All the witnesses have supported the case of prosecution. Age of the victim has been proved. The headmaster of school was examined, who has produced bonafide certificate to determine the age of victim. The offence is of serious in nature.

6. The alleged incident had occurred on 1st June, 2017. During pendency of the trial, the learned Additional Sessions Judge, Solapur had granted bail to the applicant vide order dated 4th October, 2017 on certain terms and conditions. There is no adverse report about misuse the facility of bail.

7. PW-2 is the complainant, whose deposition is hearsay. PW-4 is the victim. He has referred to sexual assault. He has not referred to his age at the time of incident. PW-5 is the Headmaster of school. He has produced bonafide certificate and other documents. Birth certificate was not produced on record.

8. PW-6 is the Medical Officer. The evidence of Medical Officer refers to the following aspects :

- (i) The victim was complaining about pain in abdomen.
- (ii) He has narrated the history of anal sexual intercourse.
- (iii) Possibility of unnatural sexual intercourse cannot be ruled out.
- (iv) He admitted that the medical certificate is silent as to who has narrated the history.
- (v) In case of forceful insertion of foreign body into anus of human body, injury is bound to occur. He voluntarily stated that it may or may not occur, it depends upon foreign body.
- (vi) At the time of medical examination, he did not find any evidence of visible injury in anus. He did not find any evidence of bleeding. He did not notice any injury on the entire body of victim.
- (vii) The medical certificate (**Exh. 43**) is silent about possibility of unnatural sexual intercourse.
- (viii) In case of forceful insertion of private part by a man into anus then private part of that person may sustain injury.

(ix) Pain in abdomen can be possible due to various reasons, which is a common complaint.

(x) In case of unnatural sexual intercourse, detail examination of anus is necessary. He did not refer the victim for X-ray of anus. On examining the anus part of victim, he found it was normal in appearance.

9. The medical report mentions that there is no visible injury over anorectal region.

10. The CA report regarding coconut oil on the clothes of victim and accused is negative. The CA report regarding the blood of victim opines that no blood was detected on nail clipping and no semen was detected on rectal swab. Blood group of the victim cannot be determined as the results are inconclusive.

11. *Prima facie* the medical evidence runs counter to case of prosecution. Applicant was on bail during the trial. Considering the aforesaid circumstances, the applicant has made out a case for suspension sentence and bail. Hence, I pass the following order :

ORDER

- i) Interim Application No. 2925 of 2021 is allowed;
- ii) During the pendency of Criminal Appeal No.978 of 2021, the sentence of imprisonment imposed vide Judgment and order dated 17th November, 2021 passed by learned Additional Sessions Judge, Solapur in Special Case No.225 of 2017 is suspended and the applicant is directed to be released on bail on executing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- iii) The applicant is permitted to furnish cash bail in the sum of Rs.25,000/- for a period of eight weeks in lieu of surety;
- iv) The applicant shall attend the trial Court once in six months on first Saturday of the month till the final disposal of the appeal;
- v) In the event, there are two consecutive defaults in attending the trial Court, the said fact may be brought to the notice of this Court and in such eventuality, the prosecution will be at liberty to prefer an application for

cancellation of bail.

vi) The applicant shall not approach victim or cause any harassment to him or his family;

vii) Interim Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)