

AGK

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

CRIMINAL REVISION APPLICATION NO. 431 OF 2022

Raju Babalu Patel ... Applicant

V/s.

The State of Maharashtra and Anr ... Respondents

Mr. Rushikesh Barge for the applicant.

Ms. G.P. Mulekar, APP for respondent no.1/State.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 15, 2022

RC.:

1. The applicant is challenging order dated 22nd June 2022 rejecting application for discharge under section 227 of the Criminal Procedure Code, 1973.

2. The applicant has been charged with offences punishable under section 354-A of the Indian Penal Code, 1860 and section 4 and 12 of the Protection of Children from Sexual Harassment Act, 2012. First information report lodged against the applicant by the victim's mother shows that around noon time the victim went to her father's shop and returned back crying. It is alleged that the applicant along with unknown person entered the shop and took her mobile and pushed the victim inside the room. The applicant allowed her to sit down and remove his pant till certain portion. He instructed the unknown person to snap his obscene photographs in the mobile. FIR was registered on the same day.

The applicant was arrested and after drawing panchanama the applicant was remanded on the same day.

3. The prosecution has produced in the charge-sheet birth certificate of the victim which *prima facie* shows that on the date of offence the applicant was thirteen (13) years old.

4. Learned Special Court while rejecting the application for discharge relied on the statement of the victim recorded under section 164 of the Criminal Procedure Code, 1973 which was in question and answer form. It is held by the learned Special Court that while answering question no.15, the victim has corroborated the fact alleged against the applicant.

5. Learned advocate for the applicant submitted that there are material improvements in the statement of the victim. He submitted that there are material contradictions and the unknown person has neither been arrested nor his identity is brought on record. Forensic report is not yet received.

6. Having considered the findings recorded by the Special Court, it appears that the findings recorded by the learned Magistrate is based on evidence on record. The material on record in the form of statement of the victim needs to be subjected to cross-examination and thereafter the veracity of the statement can be scrutinized by the Court at the time of trial. In my opinion, at this stage, the statement made by the victim in question and answer form is in tune with the complaint filed by the mother of the victim. The effect of alleged material improvements and contradictions can be considered by the learned Special Court at

the time of scrutiny of material. The said material on record, in my opinion, is sufficient to disclose grave suspicion on the applicant which has not been properly explained by the applicant.

7. In that view of the matter, I find no merit in the present revision application. The criminal revision application is, therefore, dismissed. No costs.

8. It is made clear that the observations in this order are only for the purpose of deciding the application for discharge and the learned Special Court shall conclude the trial uninfluenced by the observations made in this order.

(AMIT BORKAR, J.)