

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

**INTERIM APPLICATION NO. 591 OF 2021
IN
CRI. APPEAL NO. 114 OF 2022**

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Swapnil Sunil Gaikwad

... Applicant/Appellant.

Versus

The State Of Maharashtra & Anr.

...Respondents.

Mr. Prasanna Sahane, Advocate for the Applicant/ Appellant.

Mr. Arfan Sait, APP for the State.

Ms. Devyani Kulkarni, Advocate for Respondent No. 2.

CORAM : PRAKASH D. NAIK, J.

DATE : 6th APRIL, 2022.

P. C. :

1. This is an Application for suspension of sentence and grant of bail during the pendency of the Criminal Appeal No. 114 of 2022.

2. The Applicant/Appellant has been convicted for the offence punishable under section 376 (2)(i) of the Indian Penal Code and under section 4 of the Protection of Children from Sexual Offences Act. He has been sentenced to suffer rigorous imprisonment for ten years.

3. The case of the prosecution is that the accused and the victim are neighbours. They are known to each other.

In January, 2015, the Accused/ Applicant was stalking the victim. She was threatened by him. In April, 2015, the friend of the victim had approached her by visiting her house and told her that she should meet the accused at his residence. Thereafter, the victim visited the house of the accused alongwith her friend. The accused closed the door of the house. The victim was subjected to the sexual intercourse. The said incident was reported by her to her parents. With the assistance of the villagers, a committee meeting was conducted. The accused and his father had agreed to leave the village. Writing was executed on the stamp-paper on 15.07.2015. On 15.08.2015, the accused again visited the house of the victim and threatened her of dire consequences. The FIR was registered. The accused was arrested and the statement of witnesses were recorded. Medical examination of the victim was conducted. Charge-sheet was filed.

4. Learned Advocate for the Applicant has submitted that right from the date of arrest, the Applicant is in custody. The Applicant, so far, undergone the imprisonment of about 6 years and 7 months. The Applicant has been falsely implicated in this case. The victim and the Applicant were known to each other. She was not subjected to sexual assault. The writing executed on the stamp paper is silent about the sexual assault. It is not proved that the victim was minor. The medical evidence does not indicate that there were any injuries on the persons of the victim. The appeal may not reach final hearing immediately. The

allegations against the applicant are vague. The date of incident has not been mentioned in the complaint and the evidence.

5. The learned APP has submitted that there is strong evidence against the Applicant/Accused. There is no reason to disbelieve the version of the victim girl. She was minor. There is no dispute about the age of victim. The medical evidence supports the prosecution case. The medical report cannot be stated to be fabricated. That is not the case of defence. In-spite of writings executed by the Applicant and his father, stating that the Applicant will leave the village, he has again entered the village and threatened the victim and her family. It is also submitted that the cell phone of the Applicant was seized and objectionable photographs of the accused and the victim were found in the cell phone. The forensic report also supports the said fact. It is further submitted that after the incident of 15.08.2015, the accused had again stalked the victim on 17.08.2015 and the FIR was lodged again on 19.08.2015. There is sufficient evidence to convict the applicant under section 376 of IPC and under section 4 of POCSO Act. At the most, hearing of the Appeal may be expedited.

6. Learned Advocate for the Respondent No. 2 has supported the submissions of the learned APP. It is submitted that the victim child was minor at the time of the incident. Specific role has been attributed to the Applicant-Accused. The writings executed on the stamp-paper itself

indicate that the Applicant was harassing the victim girl. No case of suspension of sentence is made out.

7. The victim and the accused are the resident of the same village. According to the victim, the first incident had occurred in January, 2015. It is alleged that the accused was stalking her. He issued threats to her. The second incident has allegedly occurred in April, 2015. Specific date of incident has not been mentioned. According to the victim, her friend had visited her house and convinced her to visit the house of the accused. Since the accused had issued threats of causing harm to her relations, she visited the house of the accused; where she was subjected to the sexual intercourse by the accused. The friend of the victim was accompanying her but the accused had allegedly closed the door after victim entered his house. The said writing referred about alleged harassment caused to the victim by the accused and that the accused was to leave village for about 10 to 15 years. The said writing was executed by the applicant and his father. The incident of rape had occurred in April, 2015 and the writing executed thereafter, which refers only to harassment. Thus, the doubt is created, whether such incident had occurred in April, 2015. The friend of the victim has been examined as PW-4. She has stated that several gifts were given by the accused to the victim. They were closely acquainted with each other. PW-1 is the victim. She has referred to incident of stalking in January, 2015 and the incident of sexual assault in April, 2015. The evidence of medical evidence

refers to the old tears. No other injuries are reflected on the person of the victim.

8. Considering the aforesaid aspects and the fact that the Applicant is in custody for about 6 years and 7 months, I pass the following order.

ORDER

- i.** Interim Application No. 591 of 2021 is allowed.
- ii.** The sentence of imprisonment imposed vide judgment and order dated 20.10.2018 passed by the learned Additional Sessions Judge -3, Sangle in Special Case (POCSO) No. 201 of 2015, is suspended and the Applicant is directed to be released on bail on executing P.R. Bond in the sum of Rs.20,000/- with one or more sureties in the like amount.
- iii.** The Applicant is permitted to furnish cash bail in the sum of Rs.20,000/- 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 of the Applicant/Appellant 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 cause any harassment to the victim girl and shall not visit the vicinity of her residence till final disposal of the Appeal.

vii. Learned Advocate Ms. Devyani Kulkarni, shall represent the **Respondent No.2** also in the Criminal Appeal No. 114 of 2022.

viii. This order may be communicated to the Applicant/Appellant through the Superintendent of Kolhapur Central Jail.

ix. Interim Application is disposed of in the above terms.

(PRAKASH D. NAIK, J.)

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(Note: Clause (vii) of the above order is corrected as per order dt.21/04/2022 & this corrected order is uploaded accordingly.)

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