

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

**INTERIM APPLICATION NO. 106 OF 2022
IN
CRIMINAL APPEAL NO. 25 OF 2022**

Chetan Alias Sakkhya Namdev Shelake ...Applicant/Appellant
Versus
The State Of Maharashtra ...Respondent

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Mr. Aniket Nikam, Advocate for the Applicant/Appellant

Mr. H. J. Dedhia, APP for the Respondent – State.

**CORAM : PRAKASH D. NAIK, J.
DATE : 9th MARCH, 2022.**

PER COURT:

1. This is an application for suspension of sentence and grant of bail pending Criminal Appeal No.25 of 2022. The applicant is convicted by judgment and order dated 29th November, 2021 passed by the Additional Sessions Judge and Special Judge (POCSO), Nashik for offences under Section 376 (1) of Indian Penal Code (for short “IPC”), Section 323 of IPC and Section 506 Part-II of IPC. He has been sentenced to undergo rigorous imprisonment of 10 years, 1 year and 2 years respectively.

2. The case of the prosecution is that on 21st January, 2018, the victim went for grazing goats. She was accompanied by her cousins. Accused came on motorcycle. He dragged the victim

towards pond and committed forcible sexual intercourse. He assaulted cousins of victim and threatened them. The cousins shouted and on hearing shouts other persons came to the spot. The accused was apprehended. First Information Report (for short 'FIR') was registered. Medical examination of the victim was conducted. On completing investigation, charge-sheet was filed.

3. Learned counsel for the applicant submitted that the applicant has been falsely implicated in this case. The applicant is in custody for a period of four and half years. The evidence of witnesses is contradictory. The cousins were allegedly accompanying the victim are not examined. The version of PW-1 and PW-2 defers. The evidence of PW-1 is in the nature of hearsay. There is discrepancy about the recovery of clothes of victim.

4. Learned APP submitted that there is sufficient evidence to support the conviction. The evidence of victim attributes role of sexual assault to the applicant. The evidence of Medical Officer supports the prosecution case. There is no reason to falsely implicate the applicant. On hearing shouts of cousins of the victim, people working in the field had gathered at the spot. The evidence of PW-5 had disclosed that the accused was apprehended at the spot. The offence is of serious nature.

5. The alleged incident had occurred on 21st January, 2018. The offences were registered vide C.R. No.I-14 of 2018 for offences under Sections 376(i)(j), 323, 506 of IPC and Sections 4, 6, 8 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') and Section 3(1)(r)(s)(w) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. (for short "SC ST Act"). The applicant is however convicted for offences as stated herein above. There is no conviction for the offences under the POCSO Act. The applicant is acquitted for the offence under SC ST Act. In Paragraphs – 15 & 16 of the impugned judgment, the trial Court has dealt about proof of age of the victim. It was observed that the prosecution has relied upon the entries in the school register passing from one school to another and the leaving certificate issued by first attended school, which the victim had first attended, which has no evidentiary value. The prosecution has not examined the Principal of the school or the person, who had issued school leaving certificate or other person who has recorded birth date of the victim in the certificate. The prosecution has failed to prove that the victim was born on 02-09-2001 and that the victim was child within the meaning of Section 2(1)(d) of the POCSO Act. Hence, the accused was acquitted for offence under the POCSO Act. Even on perusal of

evidence of PW-1 (mother of victim) and PW-2 (victim) it can be seen that they have not specifically disclosed the date of birth of the victim.

6. PW-1 is the mother of victim. On perusal of her evidence it can be seen that, she returned from work and noticed that the victim was shouting and frightened. The victim disclosed that one boy had dragged her towards pond and subjected her to forcible sexual intercourse. She was threatened. The victim was accompanied by two girls. The accused gave them chocolates. The lady working in the agricultural field caught accused. Thereafter, the mother of victim lodged the FIR. Her evidence does not disclose the name of the accused. The victim did not disclose to her the name of the accused. She has also stated that, clothes of the victim were seized by the Police from her. PW-2 (victim) has narrated the incident. She has stated that one boy named Sakkhya came to the spot and gave chocolates to her cousins and thereafter the victim was subjected to sexual intercourse. It is pertinent to note that, while divulging the incident to her mother, the victim had not disclosed the name of accused to her. In her evidence she has referred to the name of accused as Sakkhya. Admittedly, she was not knowing the accused. She learnt from the police that he is

resident of same village and his name is Chetan Shelke. She also stated that, clothes lying at the spot of incident were recovered by the Police in her presence. From her evidence it is apparent that, two sisters were accompanying her, however, they were not examined. There is contradiction in relation to the recovery of clothes in the versions of PW-1 & PW-2. PW-5 had reached the spot, she was working in the field. She saw two girls in frightened condition. They did not disclose their names. One of them stated that, her sister is caught by some persons. The witness and others went to the spot. On the way they met Sakkhya @ Chetan. One of the girl disclosed that he is the same person, who had caught her sister. The witness and others apprehended accused. They went to the spot. The victim was lying at the spot. The accused was brought in the village. The victim was handed over to the parents. As stated above, the sisters of the victim were examined and there is no corroboration to the deposition of this witness that, one of her sister had stated that he is the same person, who caught victim. PW-7 is the Medical Officer, who had examined the victim. The evidence of the said witness discloses that the history was provided by the mother of victim that while the victim was grazing cattle in the forest, she was molested by 18 year old boy. She had examined the victim. She found minor abrasions over the back of the victim.

There are no abrasions or marks on private parts. Thus, it can be seen that the history provided by PW-7 runs counter to the version of prosecution case. The evidence also discloses that there were no forcible abrasion marks on the private part. PW-8 and PW-9 were examined in relation to the proof of date of birth of the victim. The trial Court has however disbelieved the version of this witness and it is held that the date of birth has not been proved. PW-6 is the Police Inspector, who has conducted the investigation. Although it is the version of PW-5 that accused was apprehended by her and other persons, the evidence of Police Inspector is silent as to why, where and when he was arrested. It is also apparent that the name of the accused was not known to the victim at the time of incident. On perusal of the medical case papers and the examination of the victim it can be seen that there were no injuries detected on the private part of the victim. It also appears that the victim had undergone menstruation.

7. Taking into consideration the aforesaid circumstances and the fact that the applicant is in custody for a period of about four years, case for suspension of sentence and grant of bail is made out.

8. Hence, I pass the following order:

ORDER

- i.** Interim Application No.106 of 2022 is allowed;
- ii.** During the pendency of Criminal Appeal No.25 of 2022, the sentence of imprisonment imposed vide Judgment and order dated 29th November, 2021 passed by learned Additional Sessions judge and Special Judge (POCSO), Nashik in Special Case (atrocities) No.11 of 2018 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 default 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.** Interim Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)