

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

**INTERIM APPLICATION NO.465 OF 2022
IN
CRIMINAL APPEAL NO.127 OF 2022**

Bhagoji Vitthal Baudane	.. Applicant/Appellant
<i>Versus</i>	
State of Maharashtra and Anr.	.. Respondents

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Mr.Aniket Ujjwal Nikam a/w. Mr.Piyush R. Toshinval, Mr.Amit Icham
i/b. Mr.Vivek Arote, Advocate for the Applicant/Appellant.

Mr.Arfa Sait, APP for the Respondent No.1-State.

Mr.Sudip Mallick, Advocate for Respondent No.2.

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CORAM : PRAKASH D. NAIK, J.

DATED : APRIL 26, 2022.

P.C. :

The applicant is seeking suspension of sentence and grant of bail during pendency of criminal Appeal No.127 of 2022, challenging the judgment and order dated 17th December, 2021, passed by the Special Court under POCSO Act.

**RAJESHRI
PRAKASH
AHER**

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2 The applicant is convicted for the offence punishable under Sections 376(2)(n)(f), 323, 504 and 506 of Indian Penal Code (“IPC”, for short) and Section 6 of The Protection of Children from

Sexual Offences Act ("POCSO Act", for short). The applicant is sentenced to suffer imprisonment of 20 years and fine of Rs.50,000/-.

3 The prosecution case is as under:-

The victim is daughter of informant. She was around 15 years and 4 months at the relevant time. The victim and her sisters are daughters of informant born from her first husband. After death of her first husband, the informant had performed second marriage with accused. On 4th November, 2019, the accused took the victim girl for purchasing watch. After purchasing watch, the accused went to the house of his friend. Thereafter, the accused told victim that his friend is at farm house and took her to the forest. The victim was taken to isolated place and the accused committed rape on her. She was threatened that her sister and mother would be killed, if she discloses the incident to any other persons. Due to fear, the victim kept mum. After 4 days, the victim disclosed the incident to her mother and sister. The accused was having criminal background, and, hence, the informant kept mum. On 12th December, 2019, the accused returned home. He was under influence of liquor. He abused the victim and her sister. He was forcing the victim to accompany him at Mhasurli. He assaulted victim with kick and fist blows. First Information Report

("FIR", for short) was registered. Accused was arrested. On completing investigation, charge-sheet was filed.

4 Learned advocate for the applicant submitted that the applicant is in custody from 12th December, 2019. He has been falsely implicated in this case. There has been delay in lodging FIR. Medical evidence does not support the prosecution case. There was no fresh injury about sexual assault on the person of the victim. Mother of the victim did not support the prosecution case. Delay has not been explained by the prosecution. Medical evidence refers to old tear. The shop owner when the victim and the accused have gone together did not identify the applicant. There is no other corroborative evidence to support prosecution case. The prosecution case suffers from several discrepancies.

5 Learned APP submitted that the victim was aged about 15 years 4 months at the time of incident. She was minor. There is sufficient evidence to establish the offence against the applicant. There is no delay in lodging the FIR. The medical evidence supports the prosecution case. There is no improvement in the version by the victim. The accused is step father of the victim. The Psychology of the victim girl is required to be considered. Presumption under Section 29

of the POCSO Act is not rebutted. The victim's version cannot be discarded. The fact that the mother of the victim girl has not supported the prosecution case and/or support the case would not vitiate the deposition of the victim girl.

6 Learned advocate for respondent no.2 submitted that the complaint was filed out of misunderstanding. The complainant has filed an affidavit stating that she had filed FIR inadvertently and due to misunderstanding. She has no objection, if the applicant is released on bail. The applicant had taken care of the victim being father.

7 The applicant is the step father of the victim girl. The victim was minor at the time of incident. The victim girl has been examined as P.W.1. She has deposed that her date of birth is 31st July, 2004. Birth certificate was produced on record. The accused took her for purchasing watch on his motorcycle. Thereafter, she was taken to the house of his friend, and, subsequently, to farm house of his friend. She was taken to forest. She shouted. She was threatened. The accused committed sexual intercourse with her. Due to threat, she did not disclose the incident to anybody. Subsequently, she disclosed it to her mother. P.W.2 is the sister of victim girl. She has supported the prosecution case. She also stated that the accused was threatening

them to settle the matter. There was quarrel between the accused and her mother. The mother was pressurizing her and victim to compromise the case. P.W.4 is first informant/mother of victim. She has not supported the prosecution case. The medical evidence refers to the fact that there was old tear on the genital of the victim girl. P.W. 12 is the Assistant Police Inspector. She has deposed that the accused is habitual offender. Cognizable cases were registered against him. C.R.No.49 of 2008 was registered under Section 366 A, 376 and 506 read with 34 of IPC.

8 Taking into consideration the evidence against the applicant, no case is made out for suspension of sentence of imprisonment and grant of bail.

9 Hence, I pass the following order:

:: ORDER ::

- (i) Interim Application No.465 of 2022, is rejected;
- (ii) Hearing of Appeal is expedited;
- (iii) Preparation of paper-book is expedited;
- (iv) Liberty to mention, when the paper is ready for final hearing;

(v) Interim Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)