

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

**INTERIM APPLICATION NO.469 OF 2022
IN
CRIMINAL APPEAL NO. 207 OF 2022**

Kailas Tukaram Ranjane ...Applicant/Appellant
Versus
The State of Maharashtra & Anr. ..Respondents

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Mr. Raju M. Yamgar, Advocate for the Applicant/Appellant.
Ms. Devyani Kulkarni, Advocate for Respondent No.2.
Mr. Arfan Sait, APP for the Respondent – State.

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**CORAM : PRAKASH D. NAIK, J.
DATE : 28th MARCH, 2022.**

PC.

1. The Applicant is convicted vide Judgment and order dated 2nd May, 2019 for the offences under Sections 376 and 506 Indian Penal Code (for short “IPC”) and Sections 5 and 9 of Protection of Children from Sexual Offences Act, 2012 (for short “POCSO Act”). He has been sentenced to suffer imprisonment of twelve years for the offence punishable under Section 6 of POCSO Act. He is also sentenced to suffer imprisonment for two years for the offence under Section 506 of IPC.

2. The case of the prosecution is that the informant has lodged the First Information Report (for short "FIR") stating that the accused had raped the victim. FIR was registered. Statement of victim was recorded. Victim was medically examined. Statements of victim and others were recorded. Charge-sheet was filed.

3. Learned Advocate for the applicant submitted that First Information Report is false. The victim is not the child of accused. The informant was not examined. The applicant is in custody from 15.03.2016. No blood or semen was detected on the clothes of victim. The evidence of PW-2 (victim) is not reliable. Dr. Kanika Sharma who examined the victim, has not deposed during the trial. She did not come forward to depose in Court.

4. Learned APP and Learned Advocate for the respondent No.2 submitted that there is sufficient evidence against the applicant. Medical evidence supports prosecution case. The accused was identified in the Court. There is sufficient evidence against the applicant. There is no reason to disbelieve the version of victim. The victim was minor. The victim had suffered injuries. Medical evidence supports the version of victim. PW-6 is the Medical Officer.

He has stated that Dr.Kanika Sharma prepared the medical certificate under his supervision. Medical Report refers to history of sexual assault. Assuming that the accused is not the father of victim, specific role has been attributed to him. The medical evidence refers to hymen tear at 6 o'clock position. There is evidence of penetrative sexual assault. The victim was aged around six years.

5. The victim was minor child. Medical evidence refers to penetrative vaginal intercourse. It also refers to hymenal injury. The age of injury is 48 hours. Medical Officer has stated that, on external genitalia there is no injury. On examination of hymen, there was tear at 6 o'clock position. Peri-hymenal inflammation was present. The victim (PW-2) has disclosed that the accused removed her clothes and threatened her. The accused slept on her body after removing under garment. At this stage it is not possible to disbelieve the version of victim. The victim was a small child. Considering the factual aspects of this case, no case for suspension of sentence and grant of bail is made out.

9. Hence, I pass the following order:-

ORDER

- i) Interim Application No. 469 of 2022 is rejected and disposed off;
- ii) Hearing of appeal is expedited;
- iii) Liberty to move the application for fixing the appeal for hearing after the paper book is ready.

(PRAKASH D. NAIK, J.)