

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

INTERIM APPLICATION NO.457 OF 2021

IN

CRIMINAL APPEAL NO.947 OF 2019

Banarasi R. Gupta .. Applicant.  
v/s.  
The State of Maharashtra & Another .. Respondents.

Mr. Ashok M. Saraogi, for the Applicant.

Ms. P. N. Dabholkar, APP for Respondent No.1-State.

Ms. Shraddha Sawant, for Respondent No.2.

**CORAM: PRAKASH D. NAIK, J.**  
**DATED : 25<sup>th</sup> FEBRUARY, 2022.**

PER COURT:

This is a second application for suspension of sentence and grant of bail. The previous application was rejected on merits by this Court vide order dated 31<sup>st</sup> July, 2019.

2 Applicant has been convicted for the offences punishable under Sections 6 & 10 of Protection of Children from Sexual Offences Act, (POSCO Act) and sentenced to suffer imprisonment of 10 years and 5 years respectively. Applicant was also convicted for the offence punishable under Section 376 of Indian Penal Code and Section 4 of POSCO Act. No separate sentence has been imposed for the said conviction.

3 Learned Advocate for the Applicant submitted that Applicant is senior citizen aged about 66 years. He is in custody for four years. Appeal may not come up for hearing immediately. Hence, on any terms and conditions, Applicant may be released on bail.

4 Learned APP submitted that victim is aged 6 years. Offence is

of serious nature. His previous application has been rejected on merits. No sympathy should be given to the Applicant. Considering the fact that the offence is heinous, hence this application is rejected. At the most, hearing of the Appeal may be expedited.

5            Learned Advocate for Respondent No.2 submitted that Applicant has been convicted for the aforesaid offences. There is sufficient evidence against the Applicant. Applicant was involved in the oral sex. Hence, this application may be rejected.

6            Undisputedly, Applicant's previous application has been rejected by this Court by detailed order dated 31<sup>st</sup> July, 2019. The order refers to nature of evidence against Applicant. The order also indicates that Court cannot lose the sight of the fact that the victim is only 5 years and studying in the kindergarten.

7            It is true that Applicant is a senior citizen and he is in custody for four years. Looking to the nature of evidence, the sentence of imprisonment cannot be suspended. Hence, the following order:-

#### **ORDER**

- (i) Interim Application is rejected;
- (ii) Hearing the Appeal is expedited;
- (iii) Appeal be listed for hearing in the category of 'Senior Citizen';
- (iv) Interim Application stands disposed of;
- (v) If the matter is not listed for hearing, Applicant is at liberty to move the Application for fixing the date for hearing of Appeal.

**(PRAKASH D. NAIK,J.)**