

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****INTERIM APPLICATION NO. 618 OF 2022****IN****CRIMINAL APPEAL NO. 100 OF 2020**

Afzal Jalaluddin Qureshi

.....Applicant

Vs.

The State of Maharashtra

.....Respondent

Mr. Advait Tamhankar i/by Taraq Sayed for Applicant.

Mr. S. S. Hulke, APP for State.

Mr. Subir Sarkar (appointed Advocate) for Respondent No.2.

CORAM : A. S. GADKARI, J.**DATE : 14th JUNE, 2022.****P.C.:-**

This is an Application for suspension of sentence and releasing the Applicant on bail.

Applicant is convicted under Sections 6 and 14 of the Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act") and under Section 506(II) of the Indian Penal Code (for short "IPC") and sentenced to suffer maximum rigorous imprisonment for ten years and to pay a total fine of Rs.3,000/- passed by learned Special Judge under POCSO Act, Greater Mumbai in POCSO Case No.29 of 2018 by its Judgment and Order dated 29th November, 2019.

2. Heard Mr. Tamhankar, learned Advocate for the Applicant, Mr. Sarkar, learned Advocate for the Respondent No.2 and Mr. Hulke, learned APP for State. Perused notes of evidence.

3. Learned Advocate appearing for the Applicant submitted that, the basis on which the present crime was registered by the mother of victim was a video clip, which was not produced before the trial Court by the prosecution and therefore it cannot be said that, it is the Applicant who has committed the said act, as contemplated under Section 6 of POCSO Act with the victim. He submitted that, there are lot of omissions which have been brought on record by the defence from the evidence of Respondent No.2 (PW No.1), victim (PW No.2) and medical officer. However trial Court has failed to take into consideration the said aspects while convicting the Applicant. He therefore prayed that, the Applicant may be released on bail.

4. Mr. Sarkar, learned Advocate appointed to represent the Respondent No.2 and Mr. Hulke, learned APP vehemently opposed the Application.

Mr. Sarkar submitted that, the offence alleged against the Applicant is heinous in nature. That, the Applicant was about 60 years old when he committed the said offence against the victim, who was 12 years old at the relevant time. He submitted that, the victim has identified the Applicant in Court as the person who has committed said offence against

her. He therefore prayed that, present Application may be rejected.

5. Perusal of evidence of victim (PW No.2) clearly indicates that, she has categorically narrated the sexual assault and exploitation at the hands of Applicant. She has also identified herself to be same person in the second video clip which was produced before the trial Court and the act as contemplated under Section 6 was being committed by the Applicant to whom she was knowing as 'Afazal'. She has also categorically deposed that, Applicant did the act of penetration with her.

6. Prima facie it appears that, the deposition of the prosecutrix inspires confidence in the mind of this Court and the said witness is reliable and trustworthy. As the offence alleged against the Applicant is heinous in nature, according to this Court, the Applicant does not deserve to be released on bail during the pendency of Appeal.

Application is accordingly rejected.

7. As the Applicant is in jail since the date of his arrest, hearing of Appeal is expedited.

Learned Advocate for the Applicant is granted liberty to circulate Appeal for final hearing after R & P along with Paper Books is received in the Registry.

(A.S. GADKARI, J.)