

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

**INTERIM APPLICATION NO. 723 OF 2022
IN
CRIMINAL APPEAL NO. 217 OF 2022**

Ganesh Mitthan Gurjar ..Applicant/Appellant
Versus
State of Maharashtra And Anr. ..Respondents

Mr. Prathamesh Gaikwad i/by Mr. P. J. Salsingikar, Advocate for the Applicant/Appellant.
Mr. Prosper D'Souza, Advocate for the Respondent No.2.
Shri. S.V. Gavand, APP for the State.

CORAM : PRAKASH D. NAIK, J.

Date : 12th APRIL, 2022.

PC.

1. The applicant is convicted by Judgment and Order dated 22nd February, 2021 passed by Special Judge under Protection of Children from Sexual Offences, 2012 (for short "POCSO") for the offence punishable under Section 6 of POCSO and sentenced to suffer imprisonment for ten years. He is also convicted for the offence punishable under Section 376(2) of Indian Penal Code (for short "IPC"). No separate sentence was imposed. He was convicted for offences under Sections 363 and 366 r/w Section 34 of IPC.

2. The case of the prosecution is that on 9th June, 2017, daughter of complainant received call on the mobile phone and they went out of the room under the pretext of going to toilet. They did not return. They were searched but could not be traced. It was suspected they were kidnapped. First information Report (for short "FIR") was lodged. The victim girls were traced. Their statements were recorded. They were sent for medical examination. Accused were arrested. "Victim-A" was pregnant. Girls were sent to children home. Charge-sheet was filed.

3. Learned Advocate for the applicant submitted that the applicant is in custody since last four years. He has been falsely implicated in this case. There is no evidence against him. Appeal may not reach for final hearing immediately. The evidence of witnesses do not inspire confidence. The victim had left the house voluntarily. There was no force from the accused. There is delay in lodging report.

4. Learned APP and Learned Advocate for respondent No.2 submitted that the offence is serious nature. There is sufficient evidence against the applicant. Offence is proved. The victim girls were minor at the time of incident. They were sexually assaulted by the accused.

5. Both the victims were minor. "Victim-A" was fourteen years old and "Victim-K" was sixteen years old at the time of incident birth certificates of both victims were produced on record. According to prosecution PW-4 stated that, some unknown persons took them from Kurla to Vadodara. They forcibly married with them. "Victim-A" was in relationship with accused No.2 (Applicant). She became pregnant. On medical examination "Victim-A" was found pregnant. Both victims were minors. DNA report is on record. It shows that accused No.2 had sexual intercourse with victim impregnated her. Child was born. Considering the nature of evidence no case is made out suspension of sentence. However, hearing of appeal can be expedited.

6. Hence, I pass the following order:-

ORDER

- i. Interim Application No. 723 of 2022 is rejected;
- ii. Hearing of the appeal is expedited.
- iii. Liberty is granted to apply for early hearing of the appeal once paper book is ready.

(PRAKASH D. NAIK, J.)