

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

**INTERIM APPLICATION NO.768 OF 2022
IN
CRIMINAL APPEAL NO.233 OF 2022**

**WITH
INTERIM APPLICATION NO.769 OF 2022
IN
CRIMINAL APPEAL NO.233 OF 2022**

Mohmad Azhar Mohmad Asrad Ansari Applicant
versus
State of Maharashtra & Anr. Respondents

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- Mr.Priyatosh Tiwari i/b. Mr. A. M. Saraogi, Advocate for Applicant.
- Smt. M. R. Tidke, APP for the State/Respondent.

**CORAM : SARANG V. KOTWAL, J.
DATE : 03rd AUGUST, 2022**

P.C. :

1. These applications are decided by this common order because one application is for suspension of sentence and the other is for release of Applicant on bail which is the consequential order.

2. The prosecution case is that the victim was 8 years of age at the time of incident, which had taken place on 09/07/2016. The Applicant took him to a secluded spot and had committed forcible unnatural sex with him. He was caught at

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the spot by others and C.R.No.173 of 2016 was registered at RCF Police Station. The investigation was carried out and the trial was conducted. At the conclusion of the trial, the Applicant was convicted for offence punishable u/s 5 r/w 6 of the Protection of Children from Sexual Offences Act (POCSO), 2012 and he was sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs.500/- and in default of payment to suffer further rigorous imprisonment for six months. No separate sentence was awarded for commission of offences under section 377 of the Indian Penal Code and under section 10 of the POCSO Act in view of section 42 of POCSO Act. Set off u/s 428 of Cr.P.C. was given to the Applicant.

3. Heard Mr.Priyatosh Tiwari, learned counsel for the Applicant and Smt. M. R. Tidke, learned APP for the State.
4. Learned counsel for the Applicant submitted that he is falsely implicated. The medical history mentions two offenders. However the prosecution case is restricted to one accused. Hence there is sufficient doubt created against the prosecution

case. He submitted that the medical examination does not reveal any injury suffered by the victim. He submitted that out of 10 years, the Applicant is in custody for more than 5 years.

5. Learned APP opposed this application and she relied on the evidence of the victim as well as the person who had caught the Applicant at the spot while committing the act.

6. I have considered these submissions and in particular I have perused the depositions annexed to this Appeal memo. The victim is examined as PW.3. He has stated that on the date of incident he had not gone to school. He was at home. He was playing near the railway track near his house. One person forcibly took him in the bushes and committed forcible unnatural sex with him. He started shouting. Some boys gathered there on hearing his shouts. They took the victim to his house and they took the accused to the police station. The FIR was registered and the Applicant and the victim were sent for medical examination.

7. The victim has described the incident in sufficient details. P.W.2 – mother and the P.W.1 – father have also supported and corroborated this evidence. The other important witness in this case is P.W.4. He was at the spot. He was one of the persons who had caught the accused. His evidence remained unshattered on particulars which he had narrated, though there is some omission about whether he had mentioned before the police that the accused was committing the act with the victim.
8. I have considered these submissions and in particular the statement of the victim and the medical evidence. All these issues will have to be decided at the final hearing stage. No case for releasing the Applicant on bail during pendency of Appeal is made out. The application is rejected.
9. However, since the Applicant is in custody for more than six years, the hearing of the Appeal is expedited.

(SARANG V. KOTWAL, J.)