

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

**INTERIM APPLICATION NO. 881 OF 2022
IN
CRIMINAL APPEAL NO. 265 OF 2022**

Riyazahmad Dukhu Shaikh ..Applicant.
Versus
The State of Maharashtra & Anr. ..Respondents

Ms. Anjali Patil for Applicant.
Mr. Y. Y. Dabke, APP for State/Respondent No.1.
Ms. B. Sharda, Appointed Advocate for Respondent No.2.

**CORAM : SARANG V. KOTWAL, J.
DATE : 3rd AUGUST 2022**

PC :

1. This is an application for bail pending the hearing and disposal of Criminal Appeal No. 265 of 2022. The Applicant was convicted for commission of offence punishable U/s.6 of the Protection of Children from Sexual Offences Act (for short 'POCSO') and was sentenced to suffer R.I. for 10 years and to pay a fine of Rs.5000/- and in default to suffer S.I. for 3 months. The applicant was also convicted for commission of offence punishable U/s.10 of POCSO and was sentenced to suffer R.I. for 5 years and to pay a fine of Rs.3000/- and in default to suffer S.I. for 2

months. He was further convicted for commission of offence punishable U/s.506 of IPC and was sentenced to suffer R.I. for one year. All the sentences were directed to run concurrently.

2. Heard Ms. Anjali Patil, learned counsel for the Applicant, Mr. Y. Y. Dabke, learned APP for the State/Respondent No.1 and Ms. B. Sharda, learned Appointed Advocate for the Respondent No.2.

3. The prosecution case is that the victim was 9 years of age at the time of incident. On 19/04/2017, she was playing outside her house. The applicant was having a gala near her house. He took the victim to his room and then committed forcible penetrative sexual assault on her. On the next day the victim was having pains and, therefore, she narrated the incident to her mother. Then this F.I.R. was lodged. The applicant was arrested. During trial, prosecution examined 7 witnesses. The main evidence is that of the victim herself.

4. Learned counsel for the applicant submitted that, there is serious doubt about the identity of the culprit. The victim was

not knowing the offender. She also mentioned his name wrongly during her deposition. The house where the act was committed was not pointed out by her. The applicant is not wearing spectacles which is contrary to her version. No identification parade is held. Her clothes and other articles do not reveal commission of any offence. Learned counsel submitted that the applicant is in jail for more than 5 years, therefore, bail should be granted to him.

5. Learned APP, as well as, learned counsel for the Respondent No.2 submitted that the victim had identified the applicant in the Court itself. The medical evidence supports her case. The offence is serious and, therefore, bail should not be granted to him.

6. I have considered these submissions and in particular I have perused the deposition of the victim. She has narrated the incident of penetrative sexual assault which has taken place on 19/04/2017. On the next day she was suffering from bleeding and pains. She informed her suffering to her mother. She has stated that, she had seen the accused in the Famous lane where she used

to play. She did not know his name. He was running a small shop in their area. Thereafter, her mother took her to the police station and lodged F.I.R. The police and the victim went towards the small shop of the applicant. There the victim showed the applicant to police. Thereafter her medical examination was conducted.

7. The evidence of I.O. also supports this version. He has deposed that, they were coming from the spot in an auto-rickshaw. The spot was shown by the victim. The victim also showed the person who was sitting in the said shop. He was taken to the police station. Though, there is some variance in the name, the evidence shows that the victim had pointed out the accused to the police. Even in the Court she has clearly identified the applicant as a person who had committed the said offence. Apart from that, there is medical evidence supporting the prosecution case. The medical evidence shows that, right side labia majora showed redness and inflammation, hymen was bleeding and redness edema was present. Thus, there is sufficient evidence against the applicant. Therefore, no case for grant of bail is made out. However, since the applicant is in custody for more than 5 years, the hearing of

Appeal is expedited.

8. With these observations, the Interim application is disposed of.

(SARANG V. KOTWAL, J.)