

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

**INTERIM APPLICATION NO. 983 OF 2021
IN
CRIMINAL APPEAL NO. 257 OF 2021**

Roshan Harischandra Ghadigaonkar ...Applicant/Appellant
Versus
The State Of Maharashtra And Anr. ...Respondents

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Mr. A. S. Khandeparkar a/w Mr. Rohit Mahadik a/w Mr. Rajdeep Gude,
Advocate for the Applicant/Appellant

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

Mr. Sushan Mhatre, Appointed Advocate for Respondent No.2.

**CORAM : PRAKASH D. NAIK, J.
DATE : 17th MARCH, 2022**

PER COURT:

1. This is an application for suspension of sentence and grant of bail during the pendency of Criminal appeal No.257 of 2021. The applicant is convicted for offences punishable under Sections 354, 354-A(I)(i), 354-D and 323 of Indian Penal Code (for short “IPC”) and Section 8 of Protection of Children from Sexual Offences Act, 2012 (for short ‘POCSO Act’). He has been sentenced to suffer imprisonment of one year for conviction under Section 354 of IPC, three years under Section 8 of POCSO ACT and two months for the conviction under Section 323 of IPC.

2. The prosecution case is that on 26th April, 2018 at about 5.00 p.m. the accused had stalked the victim and caught her from behind and outraged her modesty. He touched the private part of victim. The First Information Report (for short 'FIR') was registered. The applicant was arrested. Investigation proceeded and charge-sheet was filed.

3. Learned Advocate for the applicant submitted that the applicant has been falsely implicated in this case. There is no cogent evidence to convict him for the aforesaid offences. There is no independent witness corroborating the version of victim. The applicant was on bail during the trial. Even on the date of conviction sentence was suspended by the trial Court and the applicant is directed to be released on bail. This Court had continued the trial Court's order of suspension of sentence. The incident had occurred on public road. However, there is no independent witness. It is difficult to believe that the victim could be subjected to sexual assault on the road. The evidence suffers from several discrepancies. The FIR was not lodged immediately after the incident. The allegations are concocted. Applicant has been implicated due to rivalry on account of applicant holding important position in local temple.

4. Learned APP submitted that the incident is of serious nature. Specific overt act has been attributed to the applicant. There is no reason to disbelieve the version of victim. There was no reason to falsely implicate the applicant. The victim was injured due to fall at the place of incident. This fact is corroborated by medical evidence. The accused stalked the victim and then subjected her to sexual assault.

5. learned counsel for respondent No.2 supports the submissions of learned APP. It is submitted that there is evidence on record to establish that the applicant has committed the offence. The victim had suffered injuries on leg and knee which corroborates the case of prosecution that the accused had pushed the victim on road, at the time of incident.

6. The maximum sentence imposed by the trial Court for conviction is three years. The sentence is of short term. The applicant was on bail during the trial. There is no adverse report about misusing facility of bail granted to the applicant. The sentence of imprisonment was suspended by the trial Court on the day of conviction in accordance with Section 389 of Cr.P.C. This Court, by way of interim relief had continued the suspension of sentence vide order dated 5th April, 2021. The incident had

allegedly occurred on the road. The defence has urged that there is no independent witness to the incident. Serious doubt is raised on the ground that, it is difficult to believe that such incident could occur at public place.

7. Considering all the aforesaid circumstances, sentence of imprisonment can be suspended. Hence, I pass the following order:

ORDER

- i. Interim Application No. 983 of 2021 is allowed;
- ii. During the pendency of Criminal Appeal No.257 of 2021, the sentence of imprisonment imposed vide Judgment and order dated 6th February, 2021 passed by learned Sessions Judge, Sindhudurg, Oros, in Special Case (POCSO) No 21 OF 2019 is suspended and the applicant is directed to be released on bail on executing P.R. Bond in the sum of Rs.20,000/- with one or more sureties in the like amount;
- iii. The applicant is permitted to furnish cash bail in the sum of Rs.20,000/- for a period of ten weeks in lieu of surety.
- iv. The applicant shall attend the trial Court once in six months on first Saturday of the month till the final disposal of the appeal;
- v. In the event, there are two consecutive defaults in attending the trial Court, the said fact may be brought to the notice of this Court and in such eventuality, the prosecution

will be at liberty to prefer an application for cancellation of bail.

vi. The applicant shall not cause any harassment to victim.

vii. Interim Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)