

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

**INTERIM APPLICATION NO. 1122 OF 2021
IN
CRIMINAL APPEAL NO. 307 OF 2021**

Atul Uttam Avale ...Applicant/Appellant
Versus
The State Of Maharashtra And Anr. ...Respondents

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Ms. Rakhee S. Dube i/by Mr. J. M. Argade Advocate for the
Applicant/Appellant.

Mr. Nikhilesh Pote, Advocate for Respondent No.2.

Mr. S. V. Gavand, APP for the Respondent – State.

**CORAM : PRAKASH D. NAIK, J.
DATE : 5th APRIL, 2022.**

PER COURT:

1. This is an application for suspension of sentence and grant of bail during pendency of Criminal Appeal No.307 of 2021.
2. The applicant has been convicted for offence punishable under Section 363 of Indian Penal Code (for short “IPC”) and sentenced to suffer rigorous imprisonment for three years. He is also convicted for offences under Sections 354-A, 354-B of IPC and Section 8 of Protection of Children from Sexual Offences Act, 2012 (for short ‘POCSO Act’) and sentenced to suffer imprisonment of three years. He is also convicted for offence under Section 12 of the POCSO Act and sentenced to suffer rigorous

imprisonment for one year.

3. The prosecution case is that the FIR was lodged on 8th July, 2016. The accused was residing in the house of the victim therefore she knows him. In the year 2014, the accused was stalking her. In February – 2016, the accused followed her on motorcycle and told her to sit on his motorcycle. The victim refused. She was threatened and made to sit on his motorcycle. She was taken to Swarget and thereafter to another place. The accused opened the door of premises and took her inside. She was asked to remove her clothes. The accused had forcibly removed her top. The victim slapped him. She was under fear. Thereafter, the accused brought the victim to her house. On 1st July, 2016, the mother of victim inquired with her about silence and then she disclosed about the incident to her. The First Information Report (for short 'FIR') was registered.

4. Learned counsel for the applicant submits that the applicant was on bail during the trial. He has not misused the facility of bail. The sentence is of short term. The appeal may not come up for hearing immediately. The case of the prosecution is concocted at the instance of the mother of victim. The accused and the victim acquainted with each other. No incident of outraging

modesty or kidnapping had occurred. The evidence of victim indicate that both of them were friendly. There has been delay in lodging the FIR.

5. Learned APP submitted that the date of birth of the victim has been admitted by the victim. There is sufficient evidence to convict the applicant.

6. Learned counsel for the respondent No.2 submitted that the evidence of victim girl refers to incident of removing her top and thereby the accused have committed the alleged offence for which he has been convicted. The FIR was lodged after the last incident. There is no dispute about the age of victim. Specific role has been attributed to the applicant.

7. On the date of conviction the trial Court has suspended the sentence of imprisonment. The Learned counsel for applicant on instructions submitted that the applicant has surrendered to custody before the trial Court today and he has been taken in custody. The sentence of imprisonment awarded by the trial Court is of short term. There is no adverse report with regards to misuse of facility of bail granted to the applicant. From the evidence of the victim it appears that the accused was known to her. The first incident of stalking her had occurred somewhere in

the year 2014, thereafter, it is alleged that on February – 2016, the victim was forced to sit on the motorcycle and taken to the place of incident. The case of the prosecution is that the accused has forcibly removed the top of the victim. The victim then slept him. The accused then dropped her at residence.

8. From the tenor of the version it appears that it is difficult to accept that she was forcibly taken on motorcycle on the place of incident. Arguable questions are required to be considered at the time of final hearing of appeal.

9. Considering the aforesaid aspects, case for suspension of sentence and grant of bail is made out.

10. Hence, I pass the following order:

ORDER

- i. Interim Application No. 1122 of 2021 is allowed;
- ii. During the pendency of Criminal Appeal No.307 of 2021, the sentence of imprisonment imposed vide Judgment and order dated 22nd February, 2021 passed by learned Extra. Joint Additional Sessions Judge, Pune in Special Case (POCSO)No.303 of 2017 is suspended and the applicant is directed to be released on bail on executing PR. 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 the victim.

vii. Interim Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)