

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 1291 OF 2022

IN

CRIMINAL APPEAL NO. 1013 OF 2021

Mohamad Tofik Mohd. Rafik Shaikh	... Applicant/Appellant
V/s.	
The State of Maharashtra & Anr.	... Respondents

Mr. Abdul Wahab Khan a/w. Mr.Gaurav Bhavnani for Applicant/Appellant.
Ms. Sharmila Kaushik, A.P.P for Respondent No.1-State.
Ms. Meghna Gowalani for Respondent No.2.

CORAM : A.S. GADKARI, J.
DATE : 7th July 2022.

PC. :

1. This is an application for suspension of sentence and releasing the Applicant on bail.
2. Applicant has been convicted under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'P.O.C.S.O. Act') and is sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs.25,000/- by the learned Special Judge under P.O.C.S.O. Act, Gr. Mumbai in POCSO Special Case No. 433 of 2018 by its Judgment and Order dated 11th March 2021.
3. It is the prosecution case that, the Applicant is a distant relative of the First Informant. That, the Applicant had been to Mumbai from Saudi

Arabia for medical examination and for passport work and was staying with the family of the informant for about 5 days prior to lodgment of the present crime. That, on 11th June 2018 at about 4:00 am, the victim (PW-2) told her mother that, at about 2.45 am, the Applicant forcibly took her on the mezzanine floor and committed sexual assault on her. A crime bearing C.R. No. 56 of 2018 was immediately registered at Malbar Hill Police Station, Mumbai. The victim was referred for medical examination to Dr. Shradha Rathod (PW-3). The Trial Court after recording evidence and hearing the learned Advocate for the Applicant has convicted and sentenced the Applicant by the impugned Judgment and Order.

4. Learned Advocate for Applicant submitted that, as per the admission given by the father of the prosecutrix i.e. PW-1, the place of incident was a small room measuring 6 feet x 25 feet and there were more than 15 persons residing therein. That, on the date of alleged incident, the holy month of *Ramzan* was being observed by the family members of the victim and the people therein were not in deep sleep. That, therefore it is impossible for the Applicant to take the victim on the mezzanine floor forcibly and thereafter to commit the said act, as alleged against him. He submitted that, the defence of the Applicant is of false implication and from the attending circumstances which are brought on record from the cross-examination of material witnesses, it can be safely inferred that, the act

alleged against the Applicant could not have been committed on the said day and time. He submitted that, the Applicant has already undergone four years of imprisonment out of 10 years of total sentence. He therefore prayed that, the Applicant may be released on bail.

5. A bare perusal of evidence of the prosecutrix clearly indicates that, she has in unequivocal terms mentioned that it is the Applicant who has committed the said forcible act against her wish. The testimony of prosecutrix *prima-facie* inspires confidence in the mind of this Court as her evidence is of sterling nature. The testimony of prosecutrix is corroborated by Dr.Shradha Rathod (PW-3) on material aspects. It *prima-facie* appears that, the Applicant by taking undue advantage of the fact that the prosecutrix was a minor, has committed present offence.

6. In view of the above, according to me, the Applicant does not deserve to be shown any sympathy at this stage for release on bail.

7. Application is accordingly dismissed.

8. List the Appeal on Final Hearing Board as per its own turn after receipt of R. & P. with paper-books, under the caption 'Accused is in Jail'.

[A.S. GADKARI, J.]