

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

**INTERIM APPLICATION NO.1258 OF 2021  
IN  
CRIMINAL APPEAL NO.369 OF 2021**

Rajkumar Shivprasad Gupta .. Applicant/ Appellant  
***Versus***  
State of Maharashtra and Anr. .. Respondents

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Ms.Anjali Awasthi, Advocate for the Applicant/Appellant.

Mr.S.H. Yadav, APP for the Respondent – State.

Mr.Amit Mane, Advocate for Respondent No.2.

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**CORAM : PRAKASH D. NAIK, J.**

**DATED : JANUARY 12, 2022.**

**P.C. :**

The applicant has preferred this application for suspension of sentence and grant of bail during pendency of Criminal Appeal No.369 of 2021, pending before this Court.

2           Vide judgment and order dated 17<sup>th</sup> June, 2020, the applicant has been convicted by the learned Special Judge under POCSO Act for Greater Bombay, for the offence punishable under Section 376 of IPC and Section 4, 6, 8 and 12 of POCSO Act.

He has been sentenced to undergo imprisonment in all for 12 years and to pay fine of Rs.5,000/-.

3           The applicant was prosecuted for the offences punishable under Sections 376, 354, 363, 506, 109 and 323 of IPC, and, Sections 4, 6, 8 and 17 of POCSO Act.

4           The case of the prosecution is that the applicant is husband of maternal aunt of victim. Victim's mother is the sister of wife of accused. The accused and his wife resided at Kurla and the victim, her parents and younger brother resided at Wadala. Both families were on visiting terms. The accused was in habit of drinking alcohol and ill treating his wife. On 7<sup>th</sup> June, 2015, there was quarrel between accused and his wife due to which mother of victim had gone to Kurla. The victim and her brother were at home. The accused no.1 and his brother accused no.2 (deceased) came to victim's house and took her away at 6:00 p.m., with them on motorcycle on the pretext of taking her to her mother who is unwell and in hospital. The accused was angry since he was under impression that the victim's mother had told his wife to go to native place due to harassment of accused. When he returned to his house at Kurla, with victim, he did not find his wife. At

10:00 p.m., the victim was traced by her mother with accused. The victim disclosed that the accused took her to Kurla Khadi. She told her to remove clothes. She refused. The accused slapped her and brought her near Shivmandir, Kurla. FIR was lodged on 8<sup>th</sup> June, 2015, under Sections 354, 363 and 323 of IPC. Victim was referred for medical examination. Thereafter, offences were registered under Section 376 IPC and Sections 4, 6, 8 and 12 of POCSO Act.

5           The applicant was tried for the aforesaid offences before the Special Court under POCSO Act. The prosecution has examined about 13 witnesses. The Appeal challenging the judgment of conviction has been admitted by this Court and is pending for final disposal.

6           Learned advocate for the applicant has submitted that the applicant is in custody from 8<sup>th</sup> June, 2015, and, he has undergone the sentence of about six and half years. The sentence imposed by the trial Court is of 12 years. Thus, he has undergone more than half sentence awarded by the trial Court. Reliance is placed on the decision of the Apex Court in the case of ***Dinesh Kumar Singh Vs. State of Jharkhand through CBI***<sup>1</sup>. Wherein

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1 (2009) 6 SCC 628

bail was granted to the convict by taking into consideration the fact that the convict had undergone half the sentence imposed by the trial Court. It is further submitted that applicant has good case on merit. There are serious discrepancies in the evidence adduced by the prosecution. On account of dispute between his wife who is the sister of complainant and applicant. He has been falsely implicated in this case. There is major variations in the version of the victim. Initially it was alleged that the accused had outraged her modesty and subsequently, it was alleged that there was sexual intercourse. The medical evidence does not support prosecution. There were no marks of injury. There is no corroborative evidence in the form of C.A. report to link applicant accused with the crime. The medical examination report indicate that hymen was intact. Although it was alleged that the accused had subjected the victim to sexual assault for a period of 15 minutes, the medical officer has categorically stated that if the victim was subjected to sexual assault for 15 minutes, the victim would not be able to walk. The applicant was acquitted for the offence under Section 363 of IPC.

7            Learned APP and the learned counsel for the complainant submitted that the offence is of serious nature, the

victim was minor. There is no reason for victim to falsely implicate the applicant. The trial Court has convicted the applicant. The prosecution has proved its case beyond doubt. The submissions of the applicant cannot be considered at this stage. The medical evidence supports the prosecution case. The witnesses have supported the prosecution case. At the most, the Appeal may be expedited.

8           The sentence imposed by the trial Court is of 12 years. The applicant has undergone about six and half years in custody. The Appeal preferred by the applicant had been admitted on 27<sup>th</sup> October, 2021. In the light of pendency of several Appeals before this Court, the Appeal may not come up for hearing shortly. On perusal of the evidence of the complainant and the other witness, it is apparent that there is dispute between the applicant and his wife. The wife of the applicant is the sister of complainant. The evidence discloses that the applicant had informed the complainant that she should release his wife, till then the victim would be in his custody. After the victim met the complainant, the first account of incident which was given to the complainant is that the accused had outraged her modesty. Subsequently it was alleged that the accused had subjected her

to sexual intercourse. The medical evidence indicate that there were no injuries on the person of the victim. The hymen was intact. In the light of the medical evidence, the deposition of medical officer, the variation in version of victim, the allegation about sexual intercourse is doubtful.

9           The P.W.1 is the mother of victim. She staed that the wife of accused is her sister. She told her that accused is beating her after drinking liquor. She told her to go to her parents. Accused took victim with him. She found victim with accused. The victim informed her that accused told her to remove clothes and on refusal, slapped her. P.W.2 victim stated that accused called her mother and told her that she should bring his wife otherwise he will nto release her. Accused committed sexual intercourse in forest area and dark place. Her version is contrary to what she had disclosed to her mother.

10           The applicant is in custody for six and half years. Considering the aforesaid aspects, sentence of imprisonment can be suspended.

11           Hence, I pass the following order:

**:: ORDER ::**

- (i) Interim Application No.1258 of 2021, is allowed;
- (ii) During the pendency of Criminal Appeal No.369 of 2021, the sentence of imprisonment imposed on applicant vide Judgment and order dated 17<sup>th</sup> June, 2020, passed by learned Special Judge under POCSO Act, Greater Bombay, in POCSO Case No.434 of 2015, is suspended and the applicant is directed to be released on bail on executing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;
- (iii) Applicant is permitted to furnish cash bail security of Rs.25,000/-, for a period of eight weeks from today, in lieu of surety;
- (iv) Applicant shall attend the trial Court once in six month on first Saturday of the month;
- (v) In the event of two consecutive defaults in attending the trial Court, the said fact be brought to the notice of this Court;

- (vi) Interim Application No.1258 of 2021, stands disposed of accordingly;
- (vii) Parties to act on an authenticated copy of this order.

**(PRAKASH D. NAIK, J.)**