

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

**INTERIM APPLICATION NO. 1331 OF 2021
IN
CRIMINAL APPEAL NO. 413 OF 2021**

Pritesh Revansiddha Chaudhari ...Applicant/Appellant
Versus
The State Of Maharashtra And Anr. ...Respondents

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Mr. G. S. Jadhav i/by Mr. Biju A Aloor, Advocate for the
Applicant/Appellant.

Mr. Veerdhawal Kakade, Advocate for Respondent No.2.

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

CORAM : PRAKASH D. NAIK, J.
DATE : 26th APRIL, 2022.

PER COURT:

1. The applicant is seeking suspension of sentence and grant of bail during the pendency of Criminal Appeal No.413 of 2021 preferred by the applicant challenging the judgment of conviction.

2. The applicant has been convicted by judgment and order dated 18th February, 2021 for offences punishable under Sections 376 (2)(i) of Indian Penal Code (for short “IPC”) and Sections 4 & 6 of Protection of Children from Sexual Offences Act, 2012 (for short ‘POCSO Act’). He has been sentenced so suffer rigorous imprisonment for ten years.

3. The First Information Report (for short 'FIR') is lodged by the mother of victim on 17th May, 2016. It is alleged that the victim was aged about 15 years in the year – 2015. The organization namely Aakanksha Foundation was conducting classes for guiding the students from weaker sections. The victim girl was attending the classes. The applicant was teacher in the class for career guidance. The accused complained to the family of the victim girl that the victim is talking to boys and roaming with them. The accused assured the family of victim that he will keep watch on her and offered to take her to class and drop her home. Thereafter, the victim girl used to accompany the accused. On 28th December, 2015, the victim complained of abdominal pain and hence she was taken to the doctor. At that time the informant received a call from the accused. The informant told him not come to pick up the victim girl and that they are visiting dispensary. The accused also visited dispensary. The doctor advised the victim to conduct Sonography. The accused told informant that the Sonography of the victim girl was conducted four days ago. The first informant questioned the accused about it. The doctor told the informant that on account of forcible sexual intercourse there was pain in the abdomen of the victim. The informant then took the victim in confidence and inquired with her about the cause of pain. The victim girl then

disclosed that in November- 2015, when the victim was alone in the house of her grand mother, the accused came there and sexually assaulted her. Again on 24th December, 2015, the accused took the victim at his house and committed forcible sexual intercourse with her. The FIR was registered. The victim was examined by medical officer. Charge-sheet was filed.

4. Learned Advocate for the applicant submitted that the applicant is in custody from 20th May, 2016. He would completing six years imprisonment in the month of May – 2022. The applicant has been falsely implicated in this case. The evidence of witnesses is contradictory. The FIR was registered after a period of about five and half months. The age of the victim girl was not proved. It is not established that the victim was minor. The alleged incident had occurred in November- 2015 and December – 2015. The FIR was registered on 17th May, 2016.

5. Learned APP and learned Advocate for Respondent No.2 submitted that the victim was minor. She was subjected to forcible sexual intercourse by the accused. The victim was attending the classes, where the applicant/accused was a teacher. The medical evidence supports the prosecution case. The statement of victim girl was recorded under Sections 161 & 164 of Cr.PC. which supports the prosecution case.

6. The alleged incident had occurred in November, 2015 and December, 2015. The victim did not inform about the incident to her parents. On account of abdominal pain, she was taken to the doctor and thereafter the incidents were disclosed by her.

7. PW-1 is working in the Aakansha Foundation, where the classes were conducted. He has stated that the accused had joined the organization as volunteer. He used to give career guidance to the students. He was also teaching Maths and English to the students. The victim was attending the classes of accused. The accused used to teach the victim by visiting her house. The foundation has not received any complaint from any other girl or parents against the accused. The accused used to reside 40 to 45 Kms. away from the place where classes were conducted. Two officials of the foundation used to oppose suggestions of the accused.

8. PW-2 is the first informant and mother of victim. She has stated that the victim did not disclose her about the incidents before going to doctor. She got the knowledge about the incidents on 28th December, 2015. However, due to exams and threats of the accused she did not lodge the FIR immediately. It is pertinent to note that the FIR has been lodged after five and half years after the incidents were disclosed to her mother. She did not file any

complaints about threats by the accused.

9. PW-3 is the victim girl. She has stated that she did not lodge any complaint against the accused. She admitted that, in her statement before the Magistrate it is not mentioned that she was subjected to sexual assault when she was alone in the house of her grand mother by the accused and he had assaulted, threatened her that he would inform to her family members that her character is not good. The fact that the accused had committed penetrative sexual assault and that there was abdominal pain on 28th December, 2015 was disclosed by the victim girl to her mother and thereafter she went to the doctor, is also not reflected in her statement. The fact that she disclosed to her mother that due to forcible sexual intercourse there was pain in her abdomen is not reflected in her statement before the Magistrate. She cannot assign any reasons for that. PW-6 is the Medical Officer. He gave opinion that there was evidence of vaginal penetrative sexual intercourse. He also stated that the victim did not tell him that there was forcible penetrative sexual intercourse.

10. The applicant is in custody almost for a period of about 6 years. Considering these circumstances, the sentence of imprisonment can be suspended.

11. Hence, I pass the following order:

ORDER

- i.** Interim Application No. 1331 of 2021 is allowed;
- ii.** The substantive sentence of imprisonment imposed vide Judgment and order dated 18th February, 2021 passed by learned Special Judge under POCSO Act, Pune in Special POCSO Case No. 284 of 2016 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.** The applicant is permitted to furnish cash bail in the sum of Rs.25,000/- for a period of eight 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 approach the victim or her family members and shall not cause any harassment to her.
- vii.** Interim Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)