

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

**INTERIM APPLICATION NO.1267 OF 2020
IN
CRIMINAL APPEAL NO.418 OF 2020**

Yamnaji Shankar Shinde Applicant

versus

State of Maharashtra & Anr. Respondents

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- Mr. Satyavrat Joshi a/w Nitesh Mohite, Advocate for Applicant.
- Smt. M. R. Tidke, APP for the State/Respondent No.1.
- Ms. Jyotsna Kamble, Appointed Advocate for Respondent No.2.

**CORAM : SARANG V. KOTWAL, J.
DATE : 02nd AUGUST, 2022**

P.C. :

1. This is an application for bail pending hearing and final disposal of Criminal Appeal No.418 of 2020.

2. Heard Mr. Satyavrat Joshi, learned counsel for the Appellant, Ms. Jyotsna Kamble, learned counsel for Respondent No.2 and Smt. M. R. Tidke, learned APP for the State.

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3. The Applicant was convicted for commission of offence punishable u/s 376 (2) (1) of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for 12 years and was directed to pay a fine of Rs.25,000/- and in default of payment to suffer simple imprisonment for six months. He was also convicted for offence punishable u/s 506 of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.1,000/-. In default of payment to suffer simple imprisonment for 15 days. All the sentences were directed to run concurrently.
4. The prosecution case is that the Applicant was a neighbour and was residing near the house of the victim and her family. According to the prosecution case, the victim was a minor at the time of incident. However, the Applicant was not convicted for the offence under the provisions of the Protection of Children from Sexual Offences (POCSO) Act; though he was also charged for the commission of offence punishable u/s 3, 4, 7 and 8 of the POCSO Act.

5. Learned Judge had observed in paragraph No.53 that there was no proof that the victim was a minor on the date of incident and therefore the Applicant was not convicted for the offence punishable under the provisions of POCSO.
6. Learned counsel for the Applicant submitted that the Applicant is falsely implicated. The defence examined four defence witnesses. D.W.1 was sister-in-law of the victim. All of them have consistently deposed that on 14/07/2014 there was a quarrel between the families. Therefore it is quite obvious that the Applicant is involved falsely.
7. Learned APP as well as learned counsel for Respondent No.2 opposed this application and they have relied on the evidence of the victim herself.
8. I have considered these submissions. The victim in her deposition has narrated the incident in detail. She was examined

as P.W.3. She has described that the Applicant had committed rape on her showing her knife and this act was repeated subsequently. The Applicant used to frequently visit their house. Finally she lodged her FIR on 14/07/2014. She had gone to the police station with her grandmother. Learned counsel for the Applicant pointed out that in the cross-examination there are allegations that the victim was not in a fit mental state. However, her entire examination-in-chief appears to be given with sufficient clarity. She has described the incident and acts of the Applicant. Her evidence to a certain extent is supported by her mother. More importantly, the medical evidence given by the P.W.5 Dr. Priyanka Uday Hunawar is supporting the prosecution case. P.W.5 in her examination-in-chief has given categorical opinion that the victim was forced to suffer penetrative sexual assault. This opinion of the Medical Officer definitely supports the prosecution case.

9. At this stage, there is sufficient material against the Applicant. All these issues raised by learned counsel for the

Applicant will have to be decided during final hearing stage. At this stage, it is not possible to consider the submissions of the Applicant's counsel in view of the evidence given by the prosecutrix as well as by the P.W.5. The effect of the defence witness will have to be decided during final hearing stage. In this view, the Applicant cannot be granted bail. The application is therefore rejected.

10. Appeal is expedited.

(SARANG V. KOTWAL, J.)