

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

**INTERIM APPLICATION NO.1504 OF 2022
IN
CRIMINAL APPEAL NO.497 OF 2022**

Babasaheb @ Dada Madhu Karande Applicant

versus

State of Maharashtra & Anr. Respondents

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- Mr. Niranjan Bhavake i/b. Bhavake & Associate, Advocate for Applicant.
- Smt. Veera Shinde, APP for the State/Respondent.
- Mr. S. R. Nargolkar a/w Mr. Arjun Kadam, Advocate for Respondent No.2.

**CORAM : SARANG V. KOTWAL, J.
DATE : 28th JULY, 2022**

P.C. :

1. This is an application for bail pending Appeal.
2. The Appeal is admitted. The Applicant was tried for various offences. He was convicted for the offence punishable u/s 354-A(1) of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for one year and to pay a fine

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amount of Rs.5,000/- in default to suffer further rigorous imprisonment for three months. He was convicted for the offence punishable u/s 354-B of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for three years and to pay a fine amount of Rs.10,000/-, in default to suffer further rigorous imprisonment for six months. He was convicted for the offence punishable u/s 10 of the Protection of Children from Sexual Offences Act, 2012 and was sentenced to suffer rigorous imprisonment for five years and to pay a fine amount of Rs.10,000/-, in default to suffer further rigorous imprisonment for six months. The substantive sentences were directed to run concurrently. He was granted set off for the period undergone as an undertrial prisoner.

3. Heard Mr. Niranjana Bhavake, learned counsel for the Appellant, Mr. S. R. Nargolkar, learned counsel for Respondent No.2 and Smt. Veera Shinde, learned APP for the State.
4. Learned counsel for the Applicant states that he was on

bail during trial and after his conviction on 04/04/2022 he was taken in custody.

5. The prosecution case is that the Applicant was cousin of the victim's father. The FIR was lodged by the mother of the victim on 25/07/2018. The victim was 10 years of age on the date of incident. The incident occurred on 24/07/2018. It is the prosecution case that the victim was taken by the Applicant on some pretext to Kashilingwadi on his motorcycle. She was brought to her house at around 7 p.m. It is the case of the informant that the victim told her that the Applicant had taken her towards a well and had touched her private parts inappropriately. On this basis, the FIR was lodged.

6. During investigation, the victim's statement was recorded by the police and her statement was also recorded u/s 164 of Cr.P.C.

7. Learned counsel for the Applicant submitted that the

victim was examined as PW.2. She has not uttered a word against the Applicant during her deposition. Even the first informant PW.1 in initial part of her deposition has not deposed against the Applicant, but subsequently she narrated the incident which was told to her by her daughter. However, her evidence would be hearsay in the nature as far as the main incident is concerned. Her deposition can be used only to corroborate that the victim had told her the incident.

8. Learned counsel for the Applicant relied on the cross-examination in paragraph No.11 of her deposition, wherein she was confronted with a document i.e. Ex.21, which was an affidavit, wherein the first informant had mentioned that the victim had told her that she had narrated the incident falsely because of some quarrel with the Applicant. The informant denied that she had lodged the complaint through some misunderstanding. Thus, according to learned counsel for Applicant, her evidence is not trustworthy.

9. Learned APP opposed this application by making submissions that the offence is serious and a small child of 10 years was a victim.
10. Learned counsel for the Respondent No.2 vehemently opposed this application. He submitted that the learned Judge has given cogent reasons in convicting the Applicant and therefore the Applicant appears to be a dangerous person. According to learned counsel therefore, submitted that, bail should not be granted to the Applicant. He submitted that though victim has not deposed against the Applicant during trial, however she has admitted that she had given a statement before the Magistrate against the Applicant and this fact cannot be denied.
11. Learned counsel for Respondent No.2 also relied on the evidence of P.W.6 Amol Sangolkar, who has stated that on the date of incident, he had seen the Applicant and the victim together near the spot of incident. This Amol Sangolkar had called the police at the spot.

12. I have considered these submissions. As far as the witness Amol is concerned, he is mentioned by the first informant in her examination-in-chief. The victim had told her that Amol had come at the spot and had beaten the accused. However, all this is missing from Amol's statement and therefore he is not a reliable witness. As rightly submitted by learned counsel for the Applicant, even deposition of P.W.1, i.e. the mother of the victim, is not entirely trustworthy. She has not given clear answers about the Ex.21. The victim herself has not uttered a word against the Applicant, when her evidence was recorded before the trial Court. This is quite significant. The effect of her silence will have to be examined during the final hearing stage. The sentence imposed on the Applicant is five years and it is not likely that the Appeal can be heard within that period. Therefore without commenting any further on the merits of the matter, since all these issues will have to be decided during Appeal, I am inclined to grant bail to the Applicant during pendency and final disposal of this Appeal.

13. It is made clear that all the issues raised by both the sides will have to be decided finally when the Appeal is heard at the final hearing stage. The Applicant was on bail during trial and there are no allegations that he has misused the same.

14. Hence, the following order :

ORDER

- (i) During pendency and final disposal of Criminal Appeal No.497 of 2022, the Applicant is directed to be released on bail on his furnishing P. R. Bond in the sum of Rs.30,000/- with one or two sureties in the like amount.
- (ii) The Applicant shall not in any manner cause harassment to the victim or her parents.
- (iii) Interim Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)