

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

**INTERIM APPLICATION NO.1510 OF 2022
IN
CRIMINAL APPEAL NO.507 OF 2022**

Vinod Vasant Sale Applicant
versus
State of Maharashtra & Anr. Respondents

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- Mr. Laxman Kalel, Advocate for Applicant.
- Smt. J. S. Lohokare, APP for the State/Respondent.
- Mr. Shailesh S. Kharat, appointed advocate for Respondent No.2.
- PSI – Mr. Tanaji Patil, Vanrai Police Station.

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

P.C. :

1. This is an application for bail pending hearing and final disposal of the Criminal Appeal No.507 of 2022.

2. The Applicant is convicted by the Additional Sessions Judge by this order dated 10/02/2022 passed in Special (POCSO) Case No.63 of 2014. The Applicant was convicted for offence punishable u/s 4, 8 and 12 of the Protection of Children

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from Sexual Offences Act, 2012. He was sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs.25,000/- and in default to suffer imprisonment of four months. Out of fine amount, Rs.20,000/- were directed to be paid to the victim.

3. Heard Mr. Laxman Kalel, learned counsel for the Appellant, Mr. Shailesh S. Kharat, advocate for Respondent No.2 and Smt. J.S .Lohorkare, learned APP for the State.

4. The prosecution case is that the Applicant and the victim's family were neighbours. The victim was 13 years of age at the time of lodging of the FIR. On 25/12/2013 at about 09.00 p.m. the victim came to her mother and told her that the Appellant was harassing her and had winked at her. When the victim's father came home, the victim's mother told him about it. They decided to lodge FIR. The investigation was undertaken. The victim's statement was recorded u/s 164 of Cr.PC. The Applicant was arrested but during trial he was released on bail.

5. During trial, the prosecution mainly relied on the evidence of victim and her mother. Learned Judge relied on the deposition of the victim and convicted and sentenced the Applicant as mentioned earlier.
6. Learned counsel for the Applicant submitted that the incident is not proved and the allegation of penetrative sexual assault is not mentioned in the FIR. This story is an afterthought and therefore the entire prosecution case is false. There is dispute regarding the ownership of the room and therefore the Applicant is falsely implicated so that he would vacate the room.
7. Learned counsel for the Respondent No.2 as well as learned APP opposed this application. They submitted that there is no reason to disbelieve the victim. She was below 11 years of age when the actual incident of penetrative sexual assault had taken place. In such case it is not expected that she would make this incident known to others and therefore in such cases the delay in mentioning such incident is understandable.

8. I have considered these submissions. In this case the evidence of the mother of the victim is quite significant. She has deposed only about the incident dated 25/12/2013. On that day the victim had complained to her that the Applicant told her that she was looking pretty and made some gestures. P.W.1 - the mother discussed this matter with her husband - the victim's father and they decided to lodge the FIR. There is a reference to an earlier incident and at that time they had forgiven the Applicant as he had apologized.

9. The victim herself was examined as P.W.2. She has spoken the incident dated 25/12/2013. According to her the Applicant winked at her and made gestures towards her. He told her that she was looking pretty. The victim took offence and told this to her mother. The victim had deposed that two years prior to this incident, the Applicant had taken her to his house and had committed rape on her. These are the serious allegations made by the victim against the Applicant for which he was convicted.

10. The FIR itself makes no reference to any such offence of penetrative sexual assault. It only speaks about the gestures of the Applicant which were objectionable. There is reference to an incident which had taken place two years ago. It is mentioned that on that occasion also the Applicant had committed a similar act. There are no allegations of penetrative sexual assault in the FIR. The victim was not medically examined. The offence was registered vide C.R. No.361/2013 at Vanrai police station u/s 509 of IPC and 12 of POCSO Act. Even in her statement u/s 164 of Cr.P.C. there was no reference to the incident which had taken place two years prior to the FIR when the Applicant had allegedly committed rape on her. Taking into consideration this set of this circumstances and particularly looking at the deposition of the mother of the victim, serious doubt is created about the prosecution case. Learned APP submitted that there is one more case pending against the Applicant of similar nature, wherein the complainant is the same victim and that the incident had taken place in the year 2016.

11. Thus, there appears to be animosity between the parties. However, on merits of this particular case before this Court, serious doubt is created about the truthfulness about the victim's version. The Applicant has made out case for grant of bail during the pendency and final disposal of the Appeal.

12. Hence, the following order :

ORDER

- (i) During pendency and final disposal of the Criminal Appeal No.507 of 2022, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand only) with one or two sureties in the like amount.
- (ii) It is clarified that this order pertains only to Criminal Appeal No.507 of 2022.
- (iii) Interim Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)