

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

**INTERIM APPLICATION NO.1557 OF 2022
IN
CRIMINAL APPEAL NO.470 OF 2022**

Navnath Dnyanu Jadhav

.... Applicant

versus

State of Maharashtra & Anr.

.... Respondents

.....

- Ms. Misbaah Solkar, Advocate for Applicant.
- Mr. Yogesh Y. Dabke, APP for the State/Respondent No.1
- Ms. Saima Ansari (Appointed Advocate) for Respondent No.2.

**CORAM : SARANG V. KOTWAL, J.
DATE : 15th SEPTEMBER, 2022**

P.C. :

1. This is application for bail during pendency and final disposal of the Criminal Appeal No.470 of 2022. The Applicant is convicted u/s 6 and 12 of the Protection of Children from Sexual Offences Act, 2012 and u/s 366 and 377 of the Indian Penal Code.

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2. Learned Special Judge under POCSO Act, Greater

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Bombay, vide impugned judgment and order dated 11/04/2022 passed in POCSO Special Case No.501 of 2018 convicted and sentenced the Applicant to suffer rigorous imprisonment for 10 years besides imposition of fine as a major punishment for commission of these offences. The Appeal is already admitted.

3. Heard Ms. Misbaah Solkar, learned counsel for the Applicant, Ms. Saima Ansari, learned counsel for Respondent No.2 and Mr. Yogesh Y. Dabke, learned APP for the State.

4. The victim was examined as P.W.2. The incident had taken place on 07/08/2018. The date of birth of the victim is 04/02/2003. Learned counsel submitted that the victim's statement is improbable. There is delay in lodging the FIR. The prosecution witness P.W.3 is not reliable witness. Though he claims to be an eyewitness, he had not taken immediate steps to save the P.W.2. The medical evidence also does not support the prosecution case. The Applicant is in custody for more than 4 years.

5. Learned APP opposed this application. He submitted that the evidence of the victim himself does not suffer from infirmity. Based on this evidence, the conviction is properly recorded. At this stage by appreciating the evidence, the bail cannot be granted to the Applicant.

6. I have considered these submissions. I have perused the deposition as referred by the learned counsel for the Applicant. P.W.2 was the victim himself. As mentioned earlier his date of birth was 04/02/2003. The incident had taken place on 07/08/2018. The victim was taken to a dilapidated room by the Applicant. The victim was knowing the Applicant. The victim has described the incident. According to the Doctor, there was fissure and it was possible due to anal intercourse. In the cross-examination he has also opined that the fissure may not be possible only due to anal intercourse and it can be because of many reasons.

7. As far as P.W.3 is concerned, when he saw the incident he immediately went to the house of the victim and informed the aunt of the victim. At this stage his conduct cannot be said to be very unnatural. He sought help from the aunt of the victim. The other argument was that the Applicant is falsely implicated because of the quarrel between the victim's aunt's family and the accused. However, that suggestion is denied by the victim himself.

8. All these are matters of appreciation of evidence at the stage of deciding the Appeal. At this stage, considering the above evidence against the Applicant, the application is rejected. However, since the Applicant is in custody for more than 4 years, hearing of the Appeal is expedited. The application is disposed of.

(SARANG V. KOTWAL, J.)