

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

**INTERIM APPLICATION NO. 1608 OF 2021
IN
CRIMINAL APPEAL NO. 515 OF 2021**

Dattatray Bajirao Kate ...Applicant/Appellant
Versus
The State Of Maharashtra ...Respondent

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Mr. Savina Crasto i/by Mr. Sadanand Bansode, Advocate for the
Applicant/Appellant.

Mr. Aditya Bapat, Advocate for Respondent No.2.

Ms. S. V. Sonawane, APP for the Respondent – State.

CORAM : PRAKASH D. NAIK, J.
DATE : 8th APRIL, 2022.

PER COURT:

1. This is an application for suspension of sentence and grant of bail during the pendency of Criminal Appeal No.515 of 2021.

2. The applicant has been convicted vide judgment and order dated 8th March, 2021, passed by the Special Judge, under the POCSO Act, Greater Bombay for offence punishable under Section 10 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') and Section 354 of Indian Penal Code (for short "IPC"). He has been sentenced to suffer imprisonment of Seven years for the conviction under Section 10 of POCSO Act and

no separate sentence was imposed for the conviction under Section 354 of IPC.

3. The case of the prosecution is that the accused was conducting Karate classes. The twin daughters of the complainant aged around 10 years had joined Karate classes of the accused. On 15th August, 2015, the victim girls refused to go for classes. They disclosed that on 8th August, 2015 the accused had touched them inappropriately. On 15th August, 2015, the complainant approached accused and questioned him about it. He admitted his mistake and apologized. The complainant apprehended that the accused would repeat the act, hence they approached teacher of school, Vivek Sir. The Karate class of accused were closed. In spite of that, accused started classes at other place, hence the complainant approached the police and lodged FIR.

4. Learned Advocate for the applicant submitted that the applicant was on bail during the trial. He has not misused the facility of bail. The appeal may not come up for hearing immediately. The applicant has been falsely implicated in this case. There is delay in lodging FIR. The evidence of witnesses suffers from serious infirmities.

5. Learned APP and learned Advocate for respondent No.2 opposed the prayer for suspension of sentence. It is submitted

that the victim girls in their evidence has attributed the act of outraging modesty to the accused. There is no reason to disbelieve the version of victim girls. The defence has not been able to demolish the evidence of victim girls in the cross examination. The accused had committed the offence of aggravated sexual assault. The victim girls were aged around 10 years. The offence is of serious nature. The accused had admitted the act when he was questioned by complainant.

6. The alleged incident had occurred on 8th August, 2015. The victim girls had informed the incident to their mother on 15th August, 2015. The FIR was registered on 21st August, 2015. The complainant has tried to explain the delay by stating that she had approached Vivek Sir and that the accused had apologized for the act. Thereafter, accused started classes at some other place hence, the FIR was lodged. The defence has urged that the delay is unexplained. The statement of Vivek sir was recorded on 23rd August, 2015. The statement of victim girls were recorded on 22nd August, 2015.

7. PW-1 is the first informant/mother of victim girls. According to her pamphlets of Karate classes were distributed in June – 2015. Her daughters joined Karate classes of accused. The date of joining classes is not mentioned. The victims were not

willing to go for classes on 15th August, 2015. They disclosed that accused had committed alleged acts on 8th August, 2015. The refusal to go for classes was on 15th August, 2015. The incident was of 8th August, 2015. PW-1 and her husband approached Vivek Sir (PW-2) who was owner of premises of Karate classes. He was informed about incident. Accused was called and he confessed the act and apologised. He was told to close the class. PW-1 has not stated on what date they approached PW-2. After learning that accused had started classes at other place, it was decided to lodge complaint. It would mean, complaint was lodged since accused started class at another place. FIR was lodged on 21st August, 2015.

8. Although information was given to PW-1 on 15th August, 2015, FIR was lodged on 21st August, 2015. The victim girls were not attending classes from 8th August, 2015. They disclosed the incident on 15th August, 2015. PW-1 has admitted that there were 30 to 35 children attending Karate classes and no one had complained except PW-1. Her version in evidence, that, she narrated incident to her husband, Vivek sir called accused on her complaint, her daughters confided incident to her on 15th August, 2015 and at that time they were weeping, accused tendered apology to Vivek Sir is not appearing in her statement

before Police.

9. PW-3 (victim) has stated that they were going to Karate classes in August 2015. The incident occurred on 8th August, 2015. She disclosed the incident to mother on 15th August, 2015. Her statement was recorded on 21st August, 2015. There were 40 to 50 students in classes. Parents of students used to come to attend Karate classes. Her version that she visited office of Vivek Sir is not appearing in her statement before Police. PW-4 is another victim. Her evidence is similar. She admitted that other students were attending classes. Between 9th August, 2015 to 14th August, 2015 they did not disclose incident to anyone. PW-2 Vivek Thorat admitted that, except complainant and her husband no one had complained to him against accused.

10. The applicant was on bail during trial. There is no report about misuse of bail. Considering all the aspects, sentence of imprisonment can be suspended.

ORDER

- i. Interim Application No. 1608 of 2021 is allowed;
- ii. During the pendency of Criminal Appeal No.515 of 2021, the sentence of imprisonment imposed vide Judgment and order dated 08th March, 2021 passed by learned Special Judge under POCSO Act, 2012 in POCSO Special Case No.514 of 2015 is suspended and the applicant is directed to be

released on bail on executing P.R. Bond in the sum of Rs.20,000/- with one or more sureties in the like amount;

iii. The applicant is permitted to furnish cash bail in the sum of Rs.20,000/- for a period of ten 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 girls or shall not approach the family members of them.

vii. Interim Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)