

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

**INTERIM APPLICATION NO.1698 OF 2022
IN
CRIMINAL APPEAL NO.571 OF 2022**

Abdul Rashid Abdul Rauf Shaikh Applicant
Versus
The State of Maharashtra & Anr. Respondents

Mr. Prashant Jadhav, Advocate i/b. Syed Shabana M. Ali, for the Applicant.

Smt. J.S. Lohokare, APP for Respondent No.1-State.

Mr. Vishal Kanade, Advocate (appointed) for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 10th AUGUST, 2022

PC. :

1. This is an application for bail during pendency and final disposal of Criminal Appeal No.571/2022. The applicant was convicted and sentenced by the Special Judge under POCSO Act, Greater Mumbai vide his judgment and order dated 11.5.2022. The applicant was convicted for commission of offence punishable under Section 10 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and was sentenced to suffer R.I. for five years and to pay fine of Rs.10,000/- and in default to

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undergo R.I. for two months. He was convicted for the offence punishable under Section 354 of IPC and was sentenced to suffer R.I. for one year and to pay fine of Rs.5,000/- and in default to suffer RI for one month. He was also convicted under Section 354(A) of IPC, but, no separate sentence was imposed in view of the sentence imposed under Section 10 of the POCSO Act. The sentences were directed to run concurrently. Thus, the maximum sentence is five years.

2. Heard Shri Prashant Jadhav, learned counsel for the applicant, Smt. J.S. Lohokare, learned APP for the Respondent No.1-State and Shri Vishal Kanade, learned counsel appointed for the Respondent No.2.

3. The prosecution case is that the victim was about twelve years of age on the date of the incident i.e. on 17.3.2018. The applicant was having a book-binding shop near the victim's house. The victim went to his shop for bringing back her book. It is her allegation that the applicant touched her private parts inappropriately. He touched her body at different places. She got scared and ran back to her house. She narrated the incident to her mother and thus the FIR was lodged.

4. Learned counsel for the applicant submitted that the applicant is seventy-three years of age. He has no criminal antecedents. He was on bail during trial and there are no allegations of misuse of that liberty. The sentence is five years and the appeal is not likely to reach final hearing stage within that period. He submitted that the applicant is falsely implicated because of the financial dispute.

5. Learned counsel for the respondent No.2 submitted that the applicant examined himself as defence witness No.1. In the cross-examination he admitted that he had no record of any order having been placed by the victim's father and hence there was no financial transaction. The defence is false. Even his daughter, who is examined as DW-2 could not establish that there was any financial transaction. Learned APP also supported the same arguments.

6. I have considered these submissions. The appeal is already admitted and all these aspects will have to be determined at the final hearing stage. The three factors which I am considering at this stage are that (i) the applicant is 73 years of age, (ii) he was on bail during trial and has not misused that

liberty and (iii) considering the short sentence the appeal is not likely to be taken up for final hearing within that period. The matter needs to be looked at on these aspects. Considering all these aspects, the applicant has made out a case for grant of bail during hearing and final disposal of appeal. Hence, the following order :

:: O R D E R ::

- i. During hearing and final disposal of Criminal Appeal No.571/2022, the applicant is directed to be released on bail on his furnishing P.R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- ii. The applicant shall not harass the victim or her family in any manner.
- iii. Payment of fine amount is not stayed.
- iv. The Application is disposed of accordingly.

(SARANG V. KOTWAL, J.)