

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

**INTERIM APPLICATION NO. 2021 OF 2022
IN
CRIMINAL APPEAL NO. 233 OF 2020**

Sameer Salim Khan

..Applicant.

Versus

The State of Maharashtra

..Respondent

Mr. Rajesh S. Datar a/w. Dushyant S. Pagare a/w. Ms. Dhruti Datar
for Applicant.

Smt. M. R. Tidke, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 20th DECEMBER 2022

PC :

1. This is an application for bail pending final hearing and disposal of Criminal Appeal No.233 of 2020 preferred by the Applicant. The Appeal is already admitted and is pending for final disposal.

2. The Applicant has challenged the Judgment and order dated 21/01/2020 passed by learned Additional Sessions Judge, Thane, in Special Case POCSO No.226 of 2015. The Applicant was convicted for commission of offence punishable U/s.363 of the

I.P.C. and was sentenced to suffer R.I. for 5 years and to pay a fine of Rs.25000/- and in default of payment of fine to suffer S.I. for six months. The Applicant was acquitted from the charges of commission of offences punishable under sections 376 of the I.P.C., under sections 4 and 5 of the Protection of Children from Sexual Offences Act and under section 192 of the Motor Vehicle Act.

3. Heard Shri. Rajesh Datar, learned counsel for the applicant and Smt. Tidke, learned APP for the State.

4. Learned counsel for the Applicant submitted that the applicant was on bail during trial and he has not misused the same. He further submitted that the prosecution case is not proved at all. In fact, the main witness i.e. the victim herself has not supported the prosecution case. The Applicant has not misused the liberty of bail during trial. The applicant was granted parole during Covid-19 phase and he has surrendered after that period is over. Thus, the applicant has abided by all the conditions.

5. Learned APP opposed this application. She submitted that there was Charge of commission of offence punishable

U/s.376 of the I.P.C. Therefore, the matter is serious.

6. I have considered these submissions. Though, there was charge U/s.376 of I.P.C. and under POCSO Act, the applicant is acquitted from those charges. The State has not preferred appeal against acquittal of that part of order. I have perused the evidence of the victim herself who was examined as PW-2. She has deposed that, she herself had called the applicant to meet her and thereafter they had gone to various places in Mumbai. Subsequently, she herself had contacted her brother and then she was taken home. Under these circumstances, whether the offence U/s.363 of the I.P.C. is made out or not would be a matter to be decided at the final hearing stage. The victim has not supported the prosecution case and was declared hostile. The applicant was on bail during trial. The Appeal is not likely to be decided within a short span of time. In this view of the matter, the applicant has made out a case for grant of bail during pendency of his Appeal.

7. Hence, the following order:

O R D E R

- i) During pendency and final disposal of Criminal Appeal No.233 of 2020, the Applicant is directed to be released on bail on his furnishing P. R. bond in the sum of Rs.30000/- with one or two sureties in the like amount.
- ii) The Application is disposed of.

(SARANG V. KOTWAL, J.)