

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

**CRIMINAL APPLICATION NO. 898 OF 2019
IN
CRIMINAL APPEAL NO. 296 OF 2021**

Khandu Prabhakar Unkule ..Applicant.
Versus
The State of Maharashtra & Anr. ..Respondents

Ms. Savita A. Prabhune for Applicant.
Smt. Veera Shinde, APP for State/Respondent No.1.
Smt. Manisha Devkar, Appointed Advocate for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.
DATE : 2nd AUGUST 2022

PC :

1. Leave to amend is granted to remove the name of Respondent No.2 from the cause title of the application memo, as well as, memo of Appeal No.296 of 2021. Amendment shall be carried out forthwith.

2. This is an application for bail pending the disposal of Criminal Appeal No. 296 of 2021.

3. Heard.

4. The prosecution case, in short, is that, the victim was 6

years of age. Her date of birth is 16/06/2009. There are allegations that, the applicant was her uncle and he has committed penetrative sexual assault causing tearing of hymen. The applicant is sentenced under various sections. These offences are under Section 376(2)(f)(i), 506 of IPC and under sections 4, 6, 8, 10 & 12 of the Protection of Children from Sexual Offences Act, 2012. The maximum punishment imposed on him is 15 years, apart from imposition of fine.

5. Learned counsel for the applicant submitted that the Medical Officer who had examined the victim could not attend the Court and, therefore, PW-7 Dr. Ruchi Thakur was not competent to prove the injuries of the victim. She was also not competent to prove the medical history mentioned in the medical report. She submitted that, though there is conviction U/s.12 of the POCSO as well, the prosecution has failed to prove that there were any such obscene material in the mobile phone of the appellant. She submitted that, this creates doubt on the prosecution case.

6. Learned APP, as well as, learned counsel appointed for

the Respondent No.2 opposed this application. They submitted that, at this stage, the evidence on record cannot be minutely scrutinized. There is sufficient evidence against the applicant in the form of evidence of victim herself. She is examined as PW-3.

7. All these issues will have to be decided at the final hearing stage. The evidence of the victim is incriminating. Therefore, I am not inclined to grant bail to the applicant pending the Appeal. However, the applicant is in jail for more than 7 years, therefore, the Appeal itself can be fixed for final hearing.

8. Hence, the following order is passed:

O R D E R

- i) The Criminal Application is rejected.
- ii) Criminal Appeal No.296 of 2021 be placed for final hearing on the weekly final hearing board commencing from 22/08/2022.

(SARANG V. KOTWAL, J.)