

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

**INTERIM APPLICATION NO.2149 OF 2022
IN
CRIMINAL APPEAL NO.113 OF 2022**

Amar Vitthal Salve

.... Applicant

versus

State of Maharashtra & Anr.

.... Respondents

.....

- Mr. Shailesh A. Chavan (Appointed Advocate) for Applicant.
- Mr. Yogesh Y. Dabke, APP for the State/Respondent No.1.
- Ms. Meghna A. Gowalani (Appointed Advocate), Advocate for Respondent No.2.

**CORAM : SARANG V. KOTWAL, J.
DATE : 30th SEPTEMBER, 2022**

P.C. :

1. This is an application for bail pending hearing and final disposal of the Criminal Appeal No.113 of 2022.
2. Heard Mr. Shailesh A. Chavan, learned counsel for the Applicant, Mr. Yogesh Y. Dabke, learned APP for the State/Respondent No.1 and Ms. Meghna A. Gowalani, learned counsel for the Respondent No.2.

3. The Applicant was convicted and sentenced by the trial Court as under -

- (i) The Applicant was convicted for commission of offence punishable u/s 5(l)(m)(n) r/w 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO) and he was sentenced to suffer rigorous imprisonment for 12 years and to pay a fine of Rs.10,000/- and in default of payment of fine to suffer rigorous imprisonment of one year.
- (ii) He was also convicted for the offence punishable u/s 506 (II) of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.1,000/- and in default of payment of fine to suffer rigorous imprisonment for one month.
- (iii) All the sentences were directed to run concurrently.
- (iv) He was given set off u/s 428 of Cr.P.C.

- (v) In view of conviction and sentence u/s 6 of POCSO, no separate punishment was imposed for commission of offence u/s 376(2)(f)(i)(k)(n) of the Indian Penal Code and u/s 4, 8 and 12 of POCSO Act.

4. The prosecution case is that the Appellant was real father of the victim. The date of birth of the victim was 28/07/1998. The Appellant was residing with his wife and their daughter – the victim and four sons. The victim's mother had two daughters from her first marriage. The Appellant married the victim's mother, after her first husband had left her. The allegations are that for about 5 to 6 years the Appellant was committing rape on the victim in their own house. The last incident occurred on 08/04/2015. He also assaulted the victim. She went to her step-sister and then with her, went to police station and lodged her FIR, which was registered vide C.R.No.42 of 2015 at Aarey police station, Mumbai. The Applicant was arrested on 09/04/2015 and since then he is in custody. During trial, the prosecution examined nine witnesses including the

victim, her step-sister, her real mother, the medical officer who had conducted her medical examination, head master of victim's school, the social worker and three police officers.

5. Learned counsel for the Applicant submitted that the main witnesses PW.1, PW.2 and PW.3 i.e. the victim, her step-sister and her mother have not supported the prosecution case. He submitted that their evidence shows that the Applicant was strict with the victim as she was not studying sincerely and he used to beat her. Out of that anger, she lodged this false FIR. He submitted that there is no other evidence against the Applicant and since the main witnesses have not supported the prosecution case, the Applicant deserves to be released on bail. The major punishment imposed on him was for 12 years, out of which he has already completed more than 7 years and 3 months. The Appeal is not likely to be decided within the remaining period of his sentence. Therefore in this background the Applicant deserves to be released on bail.

6. Learned counsel for Respondent No.2 as well as learned APP opposed this application. They submitted that the offence is very serious. Since the incident had taken place within four walls of the house and since the victim as well as mother were dependent on the earnings of the Appellant, they have resiled from their statements, but that should not be a ground for showing sympathy to the Applicant.

7. I have considered these submissions. As rightly submitted by learned counsel for the Applicant, the main witnesses have not supported the prosecution case. The victim's mother's evidence is important. In her cross-examination she has admitted that the victim did not do her studies. She used to chat with neighbours. She used to watch TV and sometimes used to come home late. The Applicant did not like that and he used to beat her. On 08/04/2015 also the victim came home late and the Applicant had beaten her. Therefore the victim left their house and went to the house of the PW.2 i.e. the victim's step-sister and then she approached the police.

8. P.W.2, the victim's step-sister has not supported the prosecution case. In her cross-examination she admitted that when the victim approached her, she told the P.W.2 that she was very angry with her father as he had assaulted her. The victim herself has not supported the prosecution case. She denied all the instances which were mentioned in the FIR. She further admitted that on 08/04/2015 she went to her step-sister's house after the father had assaulted her in the night and then she lodged her FIR. She also admitted that she had a boy friend and that she had physical relations with him since past two years. In re-examination on behalf of prosecution she explained that she did not have physical relations.

9. The medical evidence is in the form of evidence of P.W.4 Dr. Mahesh Rohidas Sabale. He has deposed that there were no external injuries. The hymen was not intact and his opinion was consistent with old sexual intercourse. But he admitted that the hymen could get ruptured because of cycling,

jumping etc. His opinion therefore was not conclusive against the Applicant in particular.

10. The medical history which the victim had allegedly given to the Doctor and which was contrary to her deposition in the Court, was not specifically brought to her notice at the time of cross-examination by the learned APP and no explanation was sought from her.

11. Considering all these aspects, reasonable doubt is created about the prosecution case. The Applicant is already in custody since 09/04/2015. The Appeal is not likely to be decided within the remaining portion of his sentence and therefore the Applicant can be granted bail in this case. Observations made in this order are restricted to passing of this order.

12. Hence, the following order :

ORDER

- (i) During pendency and final disposal of the Criminal Appeal No.113 of 2022, the Applicant is directed to be released on bail on his furnishing PR. 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 in any manner cause harassment to the victim or her mother.
- (iii) Interim Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)