

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

**INTERIM APPLICATION NO.2156 OF 2022
IN
CRIMINAL APPEAL NO.528 OF 2022**

Mohan Dhondur Shirke

.... Applicant

versus

State of Maharashtra & Anr.

.... Respondents

.....

- Mr. Anil G. Lalla a/w Mr. Aditya Singh a/w Riddhi H. i/b. Lalla & Lalla, Advocate for Applicant.
- Mr. S. R. Agarkar, APP for the State/Respondent No.1.
- Mr. Vishal Kanade (Appointed Advocate) for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 17th NOVEMBER, 2022

P.C. :

1. This is an application for bail pending Appeal preferred by the Applicant. The Applicant was convicted and sentenced as follows :

He was convicted for offence punishable u/s 9(k),(m)
punishable u/s 10 of the Protection of Children from Sexual

Offences Act, 2012 (POCSO) and was sentenced to suffer imprisonment for five years and to pay fine of Rs.10,000/- and in default of payment of fine to suffer simple imprisonment for one month.

He was convicted for offence punishable u/s 12 of POCSO and was sentenced to suffer imprisonment for two years and to pay fine of Rs.5,000/- and in default of payment of fine to suffer simple imprisonment of 15 days.

He was convicted for offence punishable u/s 354-A(1) (i) and u/s 354-B of the Indian Penal Code. However no separate sentence was imposed considering the sentence imposed u/s 12 of POCSO.

He was granted set off u/s 428 of Cr.P.C. All the substantive sentences were directed to run concurrently. Out of fine amount, Rs.10,000/- were directed to be paid to the victim.

2. Heard Mr. Anil G. Lalla, learned counsel for the Applicant, Mr. Vishal Kanade, learned counsel for Respondent No.2 and Mr. S. R. Agarkar, learned APP for the State.
3. The prosecution case is that the Applicant and the victim's family were neighbours. The victim was 7 years of age. She was physically challenged. On the date of incident, she was kept in the Varhanda by her grandparents. At that time, the Applicant lifted her and took her inside his house. He gave her some snacks and then made her sit on Sofa. The evidence of the victim then mentions that he removed her clothes as well as his own clothes. He kissed her on her cheek and then pinched her. The grandmother came to know about this in the evening. The grandmother was told by the victim herself. Then she lodged her FIR at the Pali police station vide C.R.No.34/2021 on 02/04/2021. The incident had taken place on 01/04/2021. The investigation was carried out and the Applicant faced the trial as mentioned earlier.

4. Learned counsel for the Applicant submitted that the Applicant was almost 60 years of age. Out of 5 years of sentence he is in custody for about 1 ½ years and the only remaining sentence is 3 ½ years. The Appeal is not likely to be decided within that period. The evidence of the victim is not clear and there is possibility that the offences alleged against him are not true. The Appeal is admitted and all the issues raised in the Appeal will have to be decided at the final hearing stage.

5. Learned counsel for the Respondent No.2 as well as learned APP opposed this application. Mr. Kanade submitted that the description of the incident would squarely fall within the definition of section 7 of the POCSO in particular later part of the said section. He submitted that if the Applicant is released on bail, the victim being resident of the same village will be facing him repeatedly which will cause trauma to her, therefore bail should not be granted to him.

6. I have considered these submissions. The Appeal is already admitted and the issue raised in the Appeal will have to be decided during final hearing stage. The Applicant is already in custody for more than 1 ½ years. The remaining sentence is about 3 ½ years. Within that period the Appeal is not likely to be decided. The merits of the case will have to be decided during final hearing stage of the trial. In these circumstances the Applicant can be granted bail pending his Appeal. The concern expressed by learned counsel Mr. Kanade is also important. For that purpose the Applicant can be directed not to directly or indirectly harass the victim or her family.

7. Hence, the following order :

ORDER

- (i) During pendency and final disposal of the Criminal Appeal No.528 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 take care so that the victim is not traumatized by his presence in the village.
- (iii) He shall not cause any harassment to the victim or her family in any manner directly or indirectly.
- (iv) Interim Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)