

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

**INTERIM APPLICATION NO. 2174 OF 2022
IN
CRIMINAL APPEAL NO. 758 OF 2022**

Kailas Vitthal Bendkuli ..Applicant.
Versus
The State of Maharashtra & Anr. ..Respondents

Mr. Divesh Mehani i/b. Aniket Vagal for Applicant.
Smt. M. R. Tidke, APP for State/Respondent No.1.
Mr. Rupesh K. Bobade (Appointed Advocate) for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.
DATE : 20th DECEMBER 2022

PC :

1. This is an application for bail pending final disposal of Criminal Appeal No.758 of 2022 preferred by the applicant. The Applicant has challenged the Judgment and order dated 15/06/2021 passed by learned Additional Sessions Judge and Special Judge (POCSO), Nashik, in Special Case (POCSO) No.4 of 2017.

2. The applicant was convicted for commission of offence punishable under sections 354-A(1)(i) of the I.P.C. and under

section 7 r/w. Section 8, as well as, Section 11 r/w. Section 12 of the Protection of Children from Sexual Offences Act (for short 'POCSO Act'). The major sentence imposed on him was for three years besides imposition of fine.

3. Heard Shri. Divesh Mehani, learned counsel for the Applicant, Smt. Tidke, learned APP for the State/Respondent No.1 and Shri. Rupesh Bobade, learned Appointed Advocate for the Respondent No.2.

4. Learned counsel for the Applicant submitted that, evidence of the victim is not supported by her parents. Their evidence was important because, according to the prosecution case, the applicant had taken the victim with him with their permission. He submitted that the applicant was on bail during trial and he has not misused that liberty. He was also granted interim bail by this Court (Coram: A. S. Gadkari, J.) vide order dated 12/07/2022. Even after that there are no allegations of any misconduct on his part.

5. Learned counsel for the Respondent No.2 submitted that,

presumption U/s.29 of the POCSO Act is running against the applicant. The evidence of the victim is sufficiently clear and, therefore, the seriousness of the offence may be taken into consideration.

6. Learned APP supported the submissions of learned counsel for the Respondent No.2. However, she conceded that the sentence is short.

7. I have considered these submissions and I have perused the evidence annexed to this Appeal. In particular, I have perused the evidence of PW-1 the victim and PW-2 her mother. Some arguable points are raised by both the sides which will have to be decided at the stage of final disposal of the Appeal. The applicant was on bail during trial and there are no allegations of him misusing that liberty. The sentence is short. The Appeal is not likely to be decided within that period. Therefore, the applicant can be granted bail during pendency of his Appeal.

8. Hence, the following order:

O R D E R

- i) During pendency and final disposal of Criminal Appeal No.758 of 2022, 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.)