

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

**INTERIM APPLICATION NO.2397 OF 2022
IN
CRIMINAL APPEAL NO.728 OF 2022**

Pradip Prakash Baikar	..Applicant
Versus	
The State of Maharashtra	..Respondent

Mr. Ravindra G. Gadgil a/w. U. Tambaval, Advocate for Applicant.
Smt. Veera Shinde, APP for State/Respondent.
Mr. A.S. Pawar, PSI, Ghatkopar Police Station.

CORAM : SARANG V. KOTWAL, J.
DATE : 27th JULY 2022.

PC :

1. This is an application for bail and suspension of sentence pending the hearing and final disposal of Criminal Appeal No.728 of 2022.
2. Heard Shri. Ravindra Gadgil, learned Counsel for the applicant and Smt. Veera Shinde, learned APP for the State.
3. The applicant faced the trial before the Special

Judge under the Protection of Children from Sexual Offences Act, 2012 (POCSO). By the impugned judgment and order dated 07th June, 2022, the applicant was convicted for commission of offence punishable under section 376(2)(i) of Indian Penal Code. He was sentenced to suffer Rigorous Imprisonment for a term of Ten (10) Years and to pay fine of Rs.5,000/- and in default of payment of fine to suffer Simple Imprisonment of two months. He was also convicted for commission of offence punishable under section 506 of IPC and he was sentenced to suffer Rigorous Imprisonment for a term of one year. He was also convicted for commission of offence under sections 6 and 10 of POCSO Act. However, no separate sentence was imposed because according to the Learned Judge section 376(2)(i) of IPC provided for higher punishment.

4. The prosecution case is that the applicant was residing in the neighborhood of the victim. On 26th August, 2013, the informant-mother of the victim noticed

that the victim was going for urination frequently. She was having stomachache. On further inquiry with the victim, she told her mother that, the applicant had taken her to his house on the pretext of giving some eatables. When she went to his house, he committed rape on her. The applicant had threatened her. The victim's mother told the incident to her husband and they filed report vide Crime No.280 of 2013 at Ghatkopar Police Station. The investigation was carried out and the applicant faced the trial. During the proceedings, the charge was altered from that under section 4 to section 6 for the offence under section 5(m) of POCSO Act and from section 8 to section 10 of the POCSO Act for the offence under section 9(m) of the POCSO Act as the victim was a child below 12 years of age. After alteration of the charge, the prosecution and the defence were given an opportunity to lead evidence with regard to alter charge. However, both the parties did not take steps in that behalf.

5. Learned counsel for the applicant submitted that

the alteration of charge has caused prejudice to the applicant. He submitted that the applicant was on bail during trial and has not misused the liberty. He has not threatened any witnesses.

6. Learned APP for the State on the other hand submitted that the learned Judge has properly considered the evidence. The offence is serious and bail should not be granted.

7. I have considered these submissions. The mother of the victim has stated that the victim was 8 years of age. Birth certificate of victim shows that her date of birth is 06th April, 2005. Learned Judge relied on that birth certificate. At this stage, there is no reason to take a different view regarding her age.

8. In the impugned judgment, the Learned Judge has considered the evidence of victim and her mother which was consistent with the prosecution case. Nothing material was elicited from their cross examination. Apart from these two witnesses, there is an independent

witness PW-5 Sultana Beg. The applicant was residing in her house as a tenant. She has stated that on the date of incident she saw the applicant taking the victim with him to his house. The medical officer PW-7 Dr. Kiran Yadav, has examined the victim. He did not observe any signs of external injury marks on her body. The Learned Judge has considered this aspect in paragraph-30 of the Judgment with cogent reasons.

9. In this view of the matter on merits, there is sufficient material against the applicant. The applicant has not been in jail for a substantive period. He was sentenced to suffer Rigorous Imprisonment for a term of ten years and to pay fine of Rs.5,000/- and in default, to undergo simple imprisonment of two months. In this background, no case is made out for releasing the applicant on bail. The application is therefore rejected.

(SARANG V. KOTWAL, J.)