

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

**INTERIM APPLICATION NO.2407 OF 2022
IN
CRIMINAL APPEAL NO.845 OF 2022**

Mr. Naresh Govind Hande

.... Applicant

versus

State of Maharashtra & Anr.

.... Respondents

.....

- Mr. Vishal G. Salvi with Mr. Yashwant Nerurkar, Advocates for Applicant.
- Smt. M.R.Tidke, APP for the State/Respondent No.1.
- Mr. Shailesh Kharat (Appointed Adv.) for the Respondent No.2.

**CORAM : SARANG V. KOTWAL, J.
DATE : 13th DECEMBER, 2022**

P.C. :

1. This is an application for bail pending Appeal filed by the applicant, who is Original Accused No.2 in Criminal Appeal No.845 of 2022. Appeal is already admitted and pending for final disposal. There were three accused in Special POCSO Case No.11 of 2018 before the Special Court at Mangaon, District: Raigad. The Applicant was the Original Accused No.2. Other accused were Accused No.1-Shankar @ Bandya Sudam

Waghmare and Accused No.3-Ramdas Padaji Hande. At the conclusion of the trial, all the accused were convicted for the commission of offence punishable under Section 4 of the Protection of Children from Sexual Offences Act, 2012 and they were sentenced to suffer rigorous imprisonment for the period of seven years and to pay fine of Rs.25,000/- each. Accused No.3 was convicted for the offence punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 and was sentenced to suffer rigorous imprisonment for the period of ten years and to pay fine of Rs.25,000/-. All the accused were convicted for the offence punishable under Section 376(2)(n) of the Indian Penal Code, 1860, however, no separate sentence was passed.

2. Learned counsel for the applicant submitted that he was already on bail and was taken in custody after his conviction in March, 2020 and therefore, he has completed two and half years out of seven years' sentence. Appeal is not likely to be decided during the next five years. He invited my attention to the order dated 24th November, 2021 passed in Criminal Application No.1342 of 2021 in Criminal Appeal No.420 of

2021 passed by this Court (Coram: Smt. Anuja Prabhudessai, J.) . He submitted that Original Accused No.1-Shankar @ Bandya Sudam Waghmare has been released on bail and on parity, the applicant also deserved to be released on bail.

3. Learned counsel for the Respondent No.2 as well as the learned Assistant Public Prosecutor relied on the deposition of the victim, who opposed this application.
4. I have considered submissions and relevant records and in particular, deposition of the victim. She has been examined as P.W.2. She has deposed that her date of birth is 28th February, 2002. She delivered male child on 22nd January, 2018. She specifically named accused no.1 because of whom she had conceived out of their love relationship. She had physical relationship with Accused No.1 in May, 2017. Police had recorded her statement accordingly.
5. On 19th July, 2018, supplementary statement of the victim was recorded and at that time, she named present applicant and the original accused no.3 as persons with whom she had physical relations in May, 2017. DNA Report mentions that original accused no.3 was concluded to be biological father of

the child delivered by the victim. Thus, from the merits, it appears that applicant's name was taken subsequently. His case stands on the better footing than the original accused no.1, who is released on bail, as he was subsequently named. It is true that DNA report does not indicate that applicant had physical relations with the victim. Fact remains that his case is on better footing than original accused no.1. In this view of the matter, other two facts are also important, firstly, applicant was on bail during trial and he has not misused that liberty, secondly, he has already undergone two and half years of sentence and appeal is not likely to be decided within the remaining period of his sentence. Therefore, in this back-drop, I am inclined to grant bail to the applicant during the pendency and final hearing of Criminal Appeal No.845 of 2022.

6. Hence, the following order :

ORDER

- (i) During the pendency of Criminal Appeal No.845 of 2022, the Applicant is directed to be released on bail on his furnishing P.R. bond in the sum of Rs.30,000/- (Rupees Thirty

Thousand only), with one or two sureties in the like amount.

- (ii) Applicant shall not cause harassment to the victim directly or indirectly.
- (iii) Interim Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)