

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

**INTERIM APPLICATION NO.2828 OF 2022
IN
CRIMINAL APPEAL [STAMP] NO.14002 OF 2022**

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with

**INTERIM APPLICATION NO.2829 OF 2022
IN
CRIMINAL APPEAL [STAMP] NO.14002 OF 2022**

Ajay Abhiman Waghmare Applicant
Versus
The State of Maharashtra & Anr. Respondents

Mr. Rajesh P. Khobragade, Advocate a/w. Raj Gupta, for the Applicant.

Mr. R.M. Pethe, APP for the Respondent-State.

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

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P.C. :

1. These two applications are for suspension of sentence and release of the applicant on bail during pendency and final disposal of Criminal Appeal (Stamp) No.14002/2022.

2. Heard Shri Rajesh Khobragade, learned counsel for the applicant and Shri R.M. Pethe, learned APP for the

State.

3. The applicant was accused No.2 in Special Case No.310/2017 before learned Special Judge under POCSO Act, Mumbai. Vide judgment and order dated 13.6.2022, learned Judge convicted the applicant for commission of offences punishable under Section 376-D, 354-A, 342, 506(II) of IPC and under Sections 4, 6 and 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). The maximum punishment imposed on him was for twenty years besides imposition of fine.

4. Learned counsel for the applicant submitted that the applicant has not committed rape on the victim. He is attributed no role. The allegations against him are that he latched the room from outside when accused No.1 committed rape on the victim. The applicant would not have known the intention of the accused No.1. There are too many important contradictions in the evidence of the victim. The allegations regarding videographing the act are not supported by evidence because such video is not produced

on record. The applicant is in custody since 2017 and, therefore, considering the weak evidence against him and the minor role attributed to him, he may be released on bail by suspending the sentence.

5. Learned APP, on the other hand, opposed this application. He submitted that the victim's evidence is sufficient to convict the applicant. The offence is very serious. Her evidence is supported by medical evidence. She was tortured by the accused. Her brother has seen the objectionable video. Therefore, no sympathy can be shown to the applicant.

6. I have considered these submissions and I have also perused the evidence of the victim and other witnesses. The victim was examined as PW-1. Her date of birth was 16.11.2001. The incident had taken place in January, 2017. The victim was knowing all the accused including the present applicant. Accused No.1 had proposed marriage to her. She had refused as accused No.1 was already married. In January, 2017 on one afternoon she was proceeding

towards her house from the play-ground. At that time, accused No.1 and the present applicant stopped her. They came near her. Accused No.1 asked her to follow him. She refused. After that, accused No.1 gagged her mouth and the applicant caught her hands. She tried to resist, but failed. The accused No.1 and the applicant then took her to a tin-room situated in an isolated lane. The room was empty. The neighbours were not present as their doors were locked. She was trying to shout but accused No.1 had pressed her mouth. She somehow tried to get free but the applicant pushed her back inside the room. Accused No.1 asked the applicant to lock the room from outside. Thereafter accused No.1 committed rape on her. Applicant No.2 was standing outside. After commission of offence, accused No.1 threatened the victim not to divulge that incident to anybody as the applicant had shot the video of the act and accused No.1 threatened to make it viral. Because of this fear, she did not inform anybody. One of her friends told her that said video was shown to that friend by the applicant.

7. In February, 2017 again she was forcibly taken by accused No.1 to a tin-room and again he committed rape. On 19.4.2017 the victim's brother came to know about the incident. After that the victim told about the incident to her brother and mother. The mother got disturbed. Finally on 21.4.2017, the victim lodged her report. She was referred to medical examination and then the investigation continued.

8. The medical officer was examined as PW-10. His evidence records that the Medical Officers had opined that the overall findings were consistent with sexual assault. The medical examination was conducted on 21.4.2017 and the incidents had taken place in January and February 2017.

9. Thus, there is sufficient material against the applicant. All the points raised by learned counsel for the applicant can be considered at the stage of final hearing of the appeal. However, at this stage of considering bail, there is sufficient incriminating material pointed out by learned APP. The offence is very serious. The act of the applicant would fall within the meaning of gang rape as defined under

Section 376-D of IPC, which reads thus :

“376-D. Gang rape.-- Where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person’s natural life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.”

10. In this view of the matter, no case for grant of bail or suspension of sentence is made out. Interim Applications are rejected.

(SARANG V. KOTWAL, J.)