

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

**INTERIM APPLICATION NO.3105 OF 2022
IN
CRIMINAL APPEAL (ST) NO.15443 OF 2022**

Dineshkumar Govind Yadav Applicant
versus
State of Maharashtra & Anr. Respondents

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- Mr. Mohansinh U. Rajput, Advocate for Applicant.
- Smt. M. R. Tidke, APP for the State/Respondent No.1.

CORAM : SARANG V. KOTWAL, J.
DATE : 18th OCTOBER, 2022

P.C. :

1. This is an application for bail pending final disposal of the Appeal preferred by the Applicant.
2. The Applicant and the co-accused – original accused No.4 were convicted for commission of offence punishable u/s 376 (D) of the Indian Penal Code and u/s 4 and 8 of the Protection of Children from Sexual Offences Act, 2012. The major punishment imposed on them was 20 years besides imposition of fine. The Applicant was the original accused No.3 in POCSO Special Case No.378 of 2015 before the Special Judge

under POCSO, Greater Mumbai. He was convicted and sentenced vide Judgment and Order dated 30/08/2019. The Applicant was arrested on 28/05/2015 and since then he is in custody.

3. The prosecution case is that the victim who was 13 years of age at the time of incident and examined as PW.7 in the trial, had left her house in anger on 24/05/2015. Four persons took her to various places and ultimately all of them committed rape on her. On this basis, the FIR was lodged. Investigation was carried out and the Applicant was arrested.
4. Heard Mr. Mohansinh U. Rajput, learned counsel for the Appellant and Smt. M. R. Tidke, learned APP for the State.
5. Learned counsel for the Applicant submitted that at the time of incident, the victim was under influence of liquor and therefore her capacity to identify the accused was impaired. Therefore no reliance can be placed on her to connect the present Applicant to the offence. He submitted that the accused Nos.1 and 2 were acquitted and benefit of doubt was given to them. Similar benefit should be given to the present Applicant.

6. Learned APP opposed this application. She submitted that the victim's evidence is supported by the medical evidence. She has identified the Applicant before the Court. It is a brutal offence, and a heinous crime and therefore bail should not be granted to the Applicant.

7. I have considered these submissions. The victim has identified the accused/Applicant before the Court. She has also identified the Applicant at the time of Test Identification Parade conducted during the investigation. Her evidence is supported by the medical evidence in the form of deposition of P.W.21 Dr.Shweta Shah. She has deposed that when she examined the victim on 26/05/2015, in her opinion rape was committed on her.

8. Considering this aspect, there is sufficiently strong material against the present Applicant. At this stage, no case for grant of bail is made out. The application is rejected.

(SARANG V. KOTWAL, J.)