

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

**INTERIM APPLICATION NO.3083 OF 2022
IN
CRIMINAL APPEAL NO.921 OF 2022**

Bapu Sitaram Gaikwad Applicant

versus

State of Maharashtra & Anr. Respondents

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- Mr. Sachin R. Deokar, Advocate for Applicant.
- Smt. M. R. Tidke, APP for the State/Respondent.

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

P.C. :

1. This is an application for bail pending Appeal filed by the Applicant. The Applicant is convicted for commission of offence punishable u/s 376(3) r/w 511 of the Indian Penal Code, 376(2)(f)(j)(l)(m) r/w 511 of the Indian Penal Code and u/s 4 r/w 18 and 6 r/w 18 of the Protection of Children from Sexual Offences (POCSO) Act, 2012. The major punishment imposed on him is for 10 years, apart from imposition of fine.

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2. The Applicant is acquitted from the offence punishable u/s 376 (2)(f)(j)(l)(m) of the Indian Penal Code and 4 r/w 6 of the POCSO Act.

This means that the learned Judge has held that the attempt to commit the offence is proved, but the actual offence is not completed.

3. Heard Mr. Sachin R. Deokar, learned counsel for the Applicant and Smt. M. R. Tidke, learned APP for the State.

4. Learned counsel for the Applicant emphasized on the acquittal of the Applicant from the main offence. He submitted that the medical evidence does not really support the prosecution case as in the cross-examination the Doctor has admitted that the injured's condition was because of some events which had taken place 3 to 6 hours before the crime. Learned counsel contended that since there was considerable gap between the alleged incident and the examination of the victim, this particular observation helps the Applicant.

5. I am completely unable to accept this submission.
6. I have perused the evidence of the mother of the victim. The victim was below 19 months of age. The Applicant was cousin of the first informant's husband and hence he was uncle of the victim. On 05/06/2017, the Applicant asked his 7 years old son to bring the victim to his house. The victim's mother i.e. P.W.1 and the Applicant's wife were on the terrace. P.W.1 - victim's mother heard victim's cries. She rushed to the house of the Applicant. She found that the victim's clothes were stained with blood. The victim was taken to Doctor at village Zodage. The Doctor advised P.W.1 to take the victim to civil hospital. However, the Doctor in the civil hospital did not treat the victim as according to him it was a police case. Therefore on the next day, she went to Malegaon Taluka police station. The police referred the victim to civil hospital. There medical examination of the victim was conducted. The investigation was carried out. The blood stained bedsheet and cover of the

mattress from the house of the accused, as well as the clothes which were on the person of the victim, were seized. They were full of blood.

7. The Medical Officer's evidence is important in this case. His cross-examination will not really help the Applicant. Dr. Kishor Shivajirao Dange is examined as P.W.4. He has observed following injuries on the victim;

- (a) Red coloured discharge on her vagina, vulva and perineum i.e. bleeding and oedematous.
- (b) On perspeculm examination, she was having active bleeding and she was having tenderness on the vagina and then, there was lacerated injury on hymen and also bleeding.
- (c) On per vaginal examination, her hymen was admitting tip of finger.

8. There was clear injury to the private parts of the baby girl. The offence is heinous. It does not appear that it was just an attempt to commit the offence. In spite of that learned Judge

has very leniently convicted the Applicant only for attempt to commit the offence.

9. Considering the seriousness of the offence, no case for bail is made out. In fact, all the questions are left open as to whether he has actually committed offence or it was just an attempt. This will have to be decided at the stage of final hearing.

10. The application is rejected.

(SARANG V. KOTWAL, J.)