

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

**INTERIM APPLICATION NO.2734 OF 2021
IN
CRIMINAL APPEAL NO. 919 OF 2021**

Sundarraaj Selvaraj Devendra ..Applicant/Appellant
Versus
The State of Maharashtra & Anr. ..Respondents

Ms. Anjali Patil, Advocate for the Applicant/Appellant.
Mr. Amit Mane, Advocate for the Respondent No.2.
Mr. Arfan Sait, APP for the Respondent – State.
Mr. Sanjay N. Rane (API), Wadala T.T. Police Station, Present.

**CORAM : PRAKASH D. NAIK, J.
DATE : 4th MARCH, 2022.**

PC.

1. The applicant is convicted for offence under Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short “POCSO”) and sentenced to suffer imprisonment of ten years and to pay fine of Rs.10,000/-.

2. The case of the prosecution is that the victim boy was aged about twelve years at the time of incident. On 28.01.2017 the complainant received call from his son, informing that the victim boy was taken towards BPT road by one person on his motorcycle and by removing his clothes, the said person has committed wrong act with

victim. He was also informed that the said person is apprehended. Complainant went to the spot. People had gathered and they were assaulting accused. On inquiry with victim boy, he informed that, at about 12:30 hours, while he was playing with his friend (PW-11) in public garden one person came there and asked them to accompany him for catching fish. They agreed. The accused took them on his motorcycle towards salt creek. PW-11 remained at some distance from accused and victim boy. The accused hurriedly took the victim towards electrical tower undressed himself and removed clothes of victim boy under the pretext of catching fish. The accused applied vaseline on his lips and on his private part and inserted it in the mouth of victim boy. When the boy shouted, the accused held him tightly and took him to bushes near the tower. The accused inserted his private part in the anus of victim boy. He started shouting. Thereafter, the accused took the victim at a distance and again repeated the act. On hearing shouts, two persons came there. The accused tried to run away from the spot. He was apprehended by two persons. He was taken to Shanti Nagar Police Station. First Information Report was registered. Charge-sheet was filed.

3. The applicant has preferred this application for suspension of sentence and grant of bail.

4. Learned Advocate for the applicant submitted that the applicant has been falsely implicated in this case. He is in custody for a period of five years. He has completed half sentence. He is acquitted under Sections 363 and 377 of Indian Penal Code (for short "IPC") and Sections 4, 8 and 12 of POCSO. The identification parade was conducted one month after the incident. He was not identified by victim in the parade. The appeal may not reach for hearing shortly. The identification parade suffers from infirmities. The evidence of identification parade by another witness is doubtful. The complainant is not the eye witness to the incident. PW-2 (Panch) is not independent witness. There are omissions in the evidence of witnesses. The medical report of the victim does not support the prosecution case. There was no injury on the anus of the victim. There can be various reasons for tenderness. No vaseline was found in swab.

5. Learned APP and Learned Advocate for respondent No.2 submit that the victim was a minor boy. The offence is heinous. Under the garb of taking the victim boy for fishing, he was sexually assaulted by the accused. He was subjected to anal sexual intercourse and oral sex. The accused was apprehended at the spot. Although the victim boy has not identified the accused in the identification parade, he was identified in the Court. The friend of victim, who had accompanied victim boy and accused has identified him in the identification parade. There is sufficient evidence against the applicant/accused. On the basis of evidence the trial Court has convicted the applicant for the offence under Section 6 of POCSO i.e. aggravated penetrative sexual assault.

6. First Information Report was lodged by father of the victim boy (PW-1). PW-2 is Panch for spot Panchanama. Pouch of jasmine oil and vaseline bottle were found at the spot. PW-3 is the eye witness. He saw the accused and the victim in nude condition and the accused tried to run away. He was caught. PW-4 is victim

boy. He identified the accused in the Court. PW-6 is medical officer. He had examined the victim boy. According to him history was provided by victim and his mother. PW-7 had recorded the First Information Report. PW-8 recorded the statement of victim. PW-10 conducted the identification parade. PW-11 had accompanied the accused and victim. He has identified accused in the parade. It prima facie there is evidence against the applicant. No case is made out for suspension of sentence. Considering the fact the applicant is in custody for about five years, hearing of appeal can be expedited.

7. Hence, I pass the following order:-

ORDER

- i.** Interim Application No. 2734 of 2021 is rejected;
- ii.** Hearing of Appeal is expedited.
- iii.** Liberty to mention for fixing date of hearing as soon as the paper book is ready.

(PRAKASH D. NAIK, J.)