

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

**INTERIM APPLICATION NO. 2840 OF 2021
IN
CRIMINAL APPEAL NO. 961 OF 2021**

Nayaku @ Deva Maruti Dagade ..Applicant/Appellant
Versus
The State of Maharashtra & Anr. ..Respondents

Mr. Vikas Kolekar, Advocate for the Applicant/Appellant.
Mr. Devyani Kulkarni, Advocate for the Respondent No.2.
Mr. Arfan Sait, APP for the Respondent – State.

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

PC.

1. This is an application for suspension of sentence and grant of bail during pendency of appeal challenging the judgment of conviction.
2. The applicant is convicted by judgment and order dated 21.09.2021 passed by Special Judge, Mangaon Dist. Raigad in Special Case No.73 of 2020 for offences under Section 5(l)(n) punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short “POCSO) and sentenced to suffer imprisonment for ten years and to pay fine of Rs.1,00,000/- (Rs. One Lakh Only). He is also convicted for offence under Section 366-A

and Section 323 of Indian Penal Code (for short “IPC”) and sentenced to suffer imprisonment for eight years and six months respectively. He is further convicted for offence under Section 376 IPC and Section 3(a) punishable under Section 4 of POCSO, but no separate sentence is ordered. He is also convicted for offence under Section 366-A IPC with no separate sentence.

3. The prosecution case is that the accused is cousin father-in-law of victim. The accused told victim that her husband is proposing other girls and keeping relations with them. The sister-in-law of the victim received phone call of her father, who informed that the husband of victim girl is alongwith other girls at Birwadi and told her to return to work place. At 6:30 pm father-in-law of victim girl came to the house. Accused also came and informed that husband of victim is at Birwadi with another girls and told her to accompany him. The victim sat on his motorcycle. They proceeded towards Birwadi. They could not trace husband of victim. The accused told father-in-law of victim to follow them. The accused drove motorcycle with speed and victims father-in-law remained behind. The accused did not answer calls of victims father-in-law. The accused took victim

to village. The accused than tool the victim to tin shed and forcefully committed sexual intercourse with her. Her clothes were torn. The victim was again sexually assaulted after taking her at some distance. The victim managed to send message to her uncle. Accused took her to house of his sister and introduced her as his wife. The victim informed that she is not wife of accused. The accused threatened victim girl. The victim informed her location to her father-in-law by borrowing cell phone. The parents and father-in-law of victim came to the spot. She informed them about sexual assault. They went to police station. Complaint was lodged.

4. Learned Advocate for the applicant submitted that the applicant is in custody for a period about four years and two months. The case of the prosecution suffers from serious infirmities. The FIR is after thought. The medical evidence does not support the charge of rape. The victim did not disclose the sexual assault to persons met her during journey with accused. The age of victim as minor is not proved.

5. Learned APP and Advocate for respondent No.2 submitted that the victim was sixteen years old. She was minor.

The accused is her close relative. School record was produced to prove birth date of victim. Head Master of school was examined as PW-5. The victim was student of that school. He produced extract of general register. It cannot be said that act was consensual. There is sufficient evidence to prove the charge. The age of the victim is in dispute.

6. It is the case of the prosecution that the victim girl was married. She was fifteen years old. The prosecution has relied upon school leaving certificate of victim. The Head Master of the school is examined as PW-5. He produced extract of general register of school. The victim girl has specifically mentioned that the accused had told them about her husband having relation with other girl. The accused told victim to sit on his motorcycle. He drove the motorcycle in full speed and kidnapped her. She was subjected to sexual intercourse. The trial Court has observed that the accused had not specifically disputed the evidence of prosecution that the victim girl was with him throughout the night of the incident. The prosecution has proved that the victim was minor at the time of incident and the accused is relative of the victim girl. PW-3 is the tailor. He stated that accused

and victim came to his shop. Victim borrowed his phone and made a call. The father-in-law victim was constantly contacting accused. But accused was not taking call. The C.A. report refers to semen stains on clothes of victim. Mixed DNA profile from clothes of victim matched with nails of victim and blood of accused.

7. Considering aforesaid aspects, no case is made out for grant of bail.

8. Hence, I pass the following order:-

ORDER

- i.** Interim Application No. 2840 of 2021 is rejected;
- ii.** Hearing of Appeal is expedited.

(PRAKASH D. NAIK, J.)