

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

**INTERIM APPLICATION NO. 2887 OF 2021
IN
CRIMINAL APPEAL NO. 41 of 2022**

Rahim Abdul Manan Shaikh ..Applicant/Appellant
Versus
The State of Maharashtra & Anr. ..Respondents

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Ms. Trupti M. Khamkar, Advocate for the Applicant/Appellant.
Ms. Shraddha Sawant, Advocate for the Respondent No.2.
Ms. P. N. Dabholkar, APP for the Respondent – State.

CORAM : PRAKASH D. NAIK, J.

DATE : 4th MARCH, 2022.

PC.

1. The applicant has prayed for suspension of sentence and grant of bail during the pendency of Criminal Appeal No. 41 of 2022.
2. The applicant is convicted for offences under Sections 376, 354-A and 506 of Indian Penal Code (for short “IPC”) and Sections 4 and 7 of Protection of Children from Sexual Offences Act, 2012 (for short “POCSO”). He is sentenced to suffer imprisonment for ten years and pay fine of Rs.5,000/-. For conviction under Section 376 of IPC, he is sentenced to suffer imprisonment of three years and two years respectively for conviction under sections 354-A and 506 IPC.

3. The case of the prosecution is that on 28.08.2018, the complainant noticed that her daughter (victim) had a fever. She took her to clinic. The doctor gave medicine. The mother-in-law of complainant informed her that the victim girl had visited house of their neighbour with her brother. The neighbour (accused) sent the brother of victim to shop and while the victim was alone the accused removed her clothes and after removing his clothes lied down on victim girl. When the accused heard voice of victim grandmother, he relieved her. He threatened victim girl. First Information Report was registered under Sections 354-A and 506 of IPC and Section 8 of POCSO. The victim was medically examined. It was noticed that her hymen was torn. The medical officer opined that, there was sexual intercourse with the victim girl. Statement of victim was recorded. She stated that the accused had inserted his private part in her private part and threatened not to disclose it to anybody. After recording the statement of victim, offences were registered under 376 IPC, Section 3 and 7 of POCSO.

4. Learned Advocate for the applicant has submitted that the applicant is in jail for a period of about three years and six months. There is delay in lodging First Information Report. The applicant has been falsely implicated in this case. The incident is dated 27.08.2018. The First Information Report was registered on 05.09.2018. There is dispute between the family of victim and the accused. The victim was taken to the clinic of Dr. Yadav, who examined her. The evidence of PW-1 is not reliable. There is no injury on the person of victim. PW-3 did not disclose the incident to anyone immediately. The victim was tutored. The evidence suffers from serious infirmities.

5. Learned APP and Learned Advocate for respondent No.2 submitted that the offence is of serious nature. The victim was minor. She was sexually assaulted by accused. The medical evidence supports the prosecution case.

6. I have perused the evidence of witnesses. Specific role has been attributed to the applicant. There is no reason to disbelieve the evidence of victim. The medical evidence refers to hymenal tear. There is sufficient evidence against the applicant. The victim was

minor girl aged about five years. She was subjected to penetrative sexual assault. Hence, no case is made out for suspension of sentence.

ORDER

- i.** Interim Application No. 2887 of 2021 is rejected;
- ii.** Hearing of Appeal is expedited.

(PRAKASH D. NAIK, J.)