

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

**INTERIM APPLICATION NO. 3100 OF 2021
IN
CRIMINAL APPEAL NO. 1030 2021**

Sagar Dipak Jagtap	..Applicant
Versus	
The State of Maharashtra & Anr.	..Respondents

Mr. Harishchandra Kamble, Advocate for the Applicant.
Mr. Mr. Arfan Sait, APP, for State.
Mr. Irfan Shaikh, Advocate for the Respondent No.2.

CORAM : PRAKASH D. NAIK, J.

DATE : 16th MARCH, 2022.

PC.

1. This is an application for suspension of sentence and grant of bail. The applicant is convicted for offences punishable under Sections 376(2)(i) and 506 of Indian Penal Code (for short "IPC") r/w Section – 4 of Protection of Children from Sexual Offences Act, 2012 (for short "POCSO"). For conviction under Section 376(2)(i) of IPC, he is sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs. 5,000/- (Five thousand only). For offence under Section – 506 of IPC, he is sentenced to suffer rigorous imprisonment for two years and for

offence under Section – 4 of POCSO Act, he has been sentenced to suffer rigorous imprisonment of seven years. All the substantive sentences of imprisonment are directed to run concurrently.

2. The case of prosecution is that the victim girl aged about ten years is residing with first informant at Tembhorni, Dist. Solapur. The informant goes for work at 9:00 am and returns home at 12:00 midnight. The victim girl and her brother stayed at home. On 21.10.2018, the informant went for work. On 22.10.2018, there was pain in the stomach and head of victim girl. She was taken to Doctor. Medicine was given to her. On 24.10.2018 at about 9:00 am, the victim girl again complained about pain in stomach and private part. She was taken to Government Hospital at Tembhorni. On examination Doctor found that private part of the victim was swollen. The Doctor inquired with her and she disclosed that while she was playing, accused dragged her behind the house of Shalanbai Jagtap and committed penetrating sexual act. The accused threatened victim not to disclose the incident to anyone. She was frightened and did not disclose it to anybody till Doctor made inquiry with her. The Doctor informed the incident to Police and

First Information Report was registered. The accused was arrested. Charge-sheet was filed.

3. Learned Advocate for the applicant submitted that, the applicant has been falsely implicated in this case. The applicant is in custody for three years and four months. He was arrested on 24.10.2018. There is delay in lodging First Information Report. Age of victim was not proved. There is no evidence to prove the charge under Section – 376 of IPC. The applicant had examined defence witness Sunita Kamble. She has stated that, Jyoti Bansode and Reshma Vanjale were residing as tenant in the house of her sister. Both the ladies were involved in prostitution. They were expelled out of their house in July, 2018. Accused had objected for Reshma and Jyoti for indulging in prostitution. He was threatened by them that he will be implicated in false case. She came to know that, Jyoti and Reshma implicated accused in this case. The accused also examined Shubhangi Khillare as defence witness No.2. She has stated that, in 2018, she was residing at Tembhurni. Jyoti Bansode and Reshma Vanjale were residing in her house on rental basis. Both were indulging in prostitution. They were removed from the

premises. There is discrepancy in the evidence of witnesses. The appeal would not come up for hearing within short span of time.

4. Learned APP submitted that, victim is a minor girl aged about ten years. Specific role has been attributed to the accused. The offence is of serious nature. The accused had sexually assaulted the victim girl. There is no reason to doubt the version of victim girl. The accused have not established motive to lodge false case against him. Medical evidence supports the prosecution case. Similar submissions were advanced by learned advocate for respondent No.2. He submitted that, there is sufficient evidence to convict the accused. The role of sexual assault has been attributed to the accused. The victim was a minor child. The alleged motive for false implication claimed by the accused is after thought.

5. The victim has deposed that the accused had gagged her mouth and took her behind the house of Shalanbai and put his private organ in her urinating organ . She was threatened not to tell anybody. Since there was pain in her abdomen, she was taken to Doctor. On examination, Doctor found that, there was swelling on

the private part of the victim. The Doctor made inquiry with the victim and at that time the incident of sexual assault was disclosed by the victim to Doctor. The information was given to the Police. The appearance of the victim girl shows that, she was of tender age. She herself stated that, her age is eleven years. Specific role has been attributed to the applicant. The medical officer has deposed that he had examined the victim girl and found tear in hymen. Thus, there is sufficient evidence against the applicant.

6. Considering the aforesaid aspects, no case is made out for suspension of sentence and grant of bail.

7. Hence, on the passed following order:-

ORDER

- i) Interim application is rejected;
- ii) Hearing of Criminal Appeal No. 1030 of 2021 is expedited.

[PRAKASH D. NAIK, J.]