

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO. 4389 OF 2021**

Rajesh Rambrij Gupta	.. Applicant
Versus	
The State of Maharashtra	.. Respondent

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Mr. Gautam J. Jain for the Applicant.

Mr. S.H. Yadav, A.P.P. for the State/Respondent.

Mr. Shreeram Shirsat a/w Mr. Amandeep Singh sra a/w Mr. Shekhar Mane for Complainant.

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**CORAM: BHARATI DANGRE, J.
DATED : 22nd AUGUST, 2022**

P.C:-

1. The applicant is charged with section 376 AB, section 324, read with section 4 and 8 of the POCSO Act.

Pertinent to note that section 376 AB prescribe punishment for rape of women under 12 years of age, and the offence is punishable with a term which shall not be less than 20 years, but which may extend to imprisonment for life, which means imprisonment for the remainder of that person's natural life and with fine.

The said provision came to be inserted by the Act no.22 of 2018 with effect from 21/04/2018 and pertinent to note that in

the wake of an act no.13 of 2018, where the definition of rape is in section 375 has been amended to include manipulation of any part of the body of the woman so as to cause penetration into the Vagina, Urethra, anus or any part of body of women or makes her to do so with him or any other person, against her will and without her consent.

2. The victim girl is aged 16 years and in her statement recorded under section 161, on 12/7/2021, she had narrated the happening of the day, next to which complaint was lodged by her mother in the police station. She specifically state that the applicant use to stay in her neighbourhood and was standing in the door of his room and while she was enroute to her room, and the applicant pulled her inside the room, shut the door, switched off the light and pressed her mouth.

After removing her garments, it is alleged that he manipulated her private part. Thereafter immediately her mother found her, and she was rescued.

3. In her statement recorded under section 164 of CrPC she has maintained the same version, which apart from section 376 AB, has charged the applicant for section 4 and 8 of the POCSO Act.

Considering the age of the girl to be 12 years, the relevant provisions has been invoked.

The victim girl was also taken for medical examination which has recorded a positive report about inflammation to her private part, indicating and corroborating the act which has been

complained by the victim girl.

4. The submission of the learned counsel for the applicant is that there are certain discrepancies in the prosecution case as her mother has improved her version in supplementary statement. This aspect is however to be appreciated at the time of trial.

Suffice it to note that the consistency in the version of the victim girl in her statement under section 161 and 164 coupled with the medical evidence, do not deserve his release on bail. He shall continue to be detained till conclusion of the trial, as there is every likelihood that he may pressurize the victim girl, who reside in the neighbourhood

5. I would like to place on record my appreciation for the learned counsel Mr. Shirsat, who has rendered assistance to this Court. He shall be paid his legal remuneration by Legal Services Authority within a period of 4 weeks from today.

6. Application is rejected.

(SMT. BHARATI DANGRE, J.)