

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

**INTERIM APPLICATION NO. 3453 OF 2021
WITH
INTERIM APPLICATION NO. 3454 OF 2021
IN
CRIMINAL APPEAL NO. 1074 OF 2021**

Suresh Sundar Rajbhar

...Applicant/
Appellant

Versus

The State Of Maharashtra And Anr.

...Respondents

....

Mr. Sandeep Mishra, Advocate for the Applicant/Appellant.

Mr. Arfan Sait, APP for the Respondent – State.

Mr. Nitin Khade (API) Rabale MIDC Police Station, Present.

**CORAM : PRAKASH D. NAIK, J.
DATE : 17th FEBRUARY, 2022.**

PER COURT:

1. This is an application for suspension of sentence and grant of bail during the pendency of Criminal Appeal No.1074 of 2021. The applicant has been convicted for offences under Sections 376(2)(i)(n), 354(B), 341, 506 of Indian Penal Code (for short “IPC”) and Sections 3, 4, 5(m), punishable under Sections 6, 7, 8 & 9(n) & 10 of Protection of Children from Sexual Offences Act, 2012 (for short ‘POCSO Act’). The maximum sentence imposed by the trial Court is of 10 years.

2. The case of the prosecution is that the accused has sexually assaulted the victim girls aged about 8 years and 4 years from 2nd October, 2016 to 26th November, 2016. Pursuant to registration of the First Information Report (for short 'FIR') medical examination of victim was conducted. On completing investigation, charge-sheet was filed.

3. Learned Advocate for the applicant submitted that there is delay in lodging FIR. The victim had informed about the incident to her father on 22nd November, 2016. However, the FIR was registered on 26th November, 2016. Prior to registration of FIR, the victims had approached Child Welfare Committee. The charge under Section 376 was added after the statement of the victims were recorded under Section 164 of Cr.P.C. The applicant has been falsely implicated in this case. The victims had improvised her version. There are contradictions in her versions. It is not the case of penetrative sexual assault. The victim was stuttered. The applicant was on bail during the trial. He has not misused the facility of bail. Medical evidence does not support the prosecution case. Hence, the sentence of imprisonment may be suspended and the applicant may be released on bail.

4. Learned APP vehemently opposed the prayers sought in these applications. It is submitted that the offence is of serious nature. There are two minor victims aged about 8 years and 4 years. They were sexually assaulted by the accused. Minor discrepancies does not affect the prosecution case. There is no inordinate delay in lodging the FIR. The medical officer has deposed that the victims was raped. Merely on the ground that the applicant was granted bail during the pendency of trial, sentence may not be suspended considering the evidence on record. The applicant was granted bail in accordance with Section 167(2) of Cr.P.C. The trial Court has awarded lessor punishment. This is fit case of enhancement of sentence.

5. Learned counsel for respondent No.2 reiterated submissions of learned APP. It is submitted that the victim has attributed specific role to the applicant. She was minor aged about 8 years at the time of incident. The other victim is sister of victim, who has been examined before the Court. Medical evidence supports the prosecution case. At this stage cannot be said that it was not the case of penetrative sexual assault.

6. I have perused the documents on record. The victim has been examined as PW-6. She has deposed about

the incident and attributed role of sexual assault to the accused. She has also stated that she knows the accused. He was residing in front of their house. She has narrated the incident. She has given details of the nature of sexual assault. The evidence refers to the penetrative sexual assault. The Medical Officer has stated that the victim was raped. Prima facie appeal has been admitted and it is pending for hearing.

7. In the light of the nature of evidence, contention of the learned counsel for the appellant cannot be accepted at this stage. Hence, no case is made out for suspension of sentence and grant of bail.

8. Hence, I pass the following order:

ORDER

- i. Interim Application Nos. 3453 of 2021 & 3454 of 2021 stand rejected and disposed of accordingly.
- ii. Hearing of appeal is expedited.
- iii. Learned appointed Advocate be paid requisite professional fees for providing legal assistance for arguing the applications for suspension of sentence and grant of bail.

(PRAKASH D. NAIK, J.)