

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

**INTERIM APPLICATION NO. 660 OF 2019
IN
CRIMINAL APPEAL NO.933 OF 2021**

Ansar Ahmed Fazlur Rehman

Ansari @ Pora

.. Applicant/ Appellant

Versus

State of Maharashtra and Anr.

.. Respondents

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Mr.Veerdhaval Deshmukh, Advocate for the Applicant/Appellant.

Mr.Arfan Sait, APP for Respondent – State

Mr.Irfan Shaikh, (Appointed) Advocate for the Respondent No.2.

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CORAM : PRAKASH D. NAIK, J.

DATED : FEBRUARY 10, 2022.

P.C. :

This is an application for suspension of sentence and grant of bail. The applicant has been convicted vide judgment and order dated 29th January, 2019, passed by learned Additional Sessions Judge-2, Vasai, in POCSO Special Case No.54 of 2016, for the offence punishable under Section 5(m) punishable under Section 6 of Protection of Children From Sexual Offence Act, and sentenced to suffer imprisonment of 20 yeas and to pay fine of Rs.15,000/-. The applicant is also convicted for the offence under Section 442 punishable under section 451 of IPC and sentenced to suffer rigorous imprisonment for two years.

2 The case of the prosecution is that on 8th June, 2016, the child was at home. Her elder brother was playing outside house. The accused was known to the child. He entered in her house. He caught her hand and brought her behind the plywood partition and sexually assaulted her by committing penetrative sexual assault. Her brother opened the door. The accused ran away. The FIR was registered. Accused was arrested and charge-sheet was filed.

3 The Appeal preferred by the applicant/appellant has been admitted and is pending for final hearing.

4 Learned counsel for the applicant submitted that there are serious discrepancies in the evidence of the prosecution. The victims version cannot be believed. In the cross-examination, she has stated that her brother had tutored her. The presence of the accused at the premises where the alleged incident had occurred is doubtful. There are omissions in the evidence of witnesses. Hence, sentence of imprisonment may be suspended and bail may be granted to the applicant.

5 Learned APP submitted that the child was aged about six years at the time of incident. The sexual assault was brutal. She was

ravished by the accused. The victim has clearly stated before the Court that the applicant-accused has committed penetrative sexual assault. The victim was examined by the medical officer and the medical report supports the prosecution case. The medical report refers to the recent injuries. Blood stains were noticed.

6 Learned counsel for respondent no.2 submitted that there is sufficient evidence to convict the appellant/applicant. The medical evidence supports the prosecution case.

7 The victim in her evidence before the Court has categorically stated that she was sexually assaulted by the accused. The medical evidence also clearly supports the prosecution case. *Prima facie*, the evidence of the victim who was aged six years at the time of incident attributes specific role to the applicant-appellant. No case is made out to suspend the sentence. Considering the fact that the applicant/appellant is in custody from the the date of arrest, the hearing of the Appeal is expedited.

8 Interim Application No.660 of 2019, is rejected, and, disposed of accordingly.

(PRAKASH D. NAIK, J.)