

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO.6 OF 2023
IN
CRIMINAL APPEAL NO.9 OF 2023**

Vikas s/o. Narayan Kande	..Applicant
Vs.	
The State of Maharashtra	
and ors.	..Respondents

Ms.Varsha V. Sundale, Advocate for applicant
Mr.N.T.Bhagat, APP for respondent no.1
Ms.Rani R. Tandale, Advocate for respondent nos.2 and 3

**CORAM : R.G.AVACHAT, J.
RESERVED ON : MARCH 13, 2023
PRONOUNCED ON : MARCH 20, 2023**

ORDER :-

Heard.

2. This is an application for suspension of execution of substantive sentence of imprisonment. The applicant has been convicted for the offence punishable under Section 18 read with Section 6 of the Protection of Children from Sexual Offence Act, 2012 (POCSO) as well as Section 376(2)(i) read with Section 511 of Indian Penal Code and therefore, sentenced to suffer rigorous imprisonment for one half of the imprisonment for life. As such, the applicant has been sentenced to suffer rigorous imprisonment for 10 years. He has

also been convicted for the offence punishable under Section 506(ii) of Indian Penal Code and, therefore, sentenced to suffer rigorous imprisonment for seven years. He has also been directed to pay fine with the default stipulation.

3. Learned counsel for the applicant would submit that there is delay of about fifteen days in lodging of the FIR. One of the alleged victims has not been examined. The applicant resides in a thickly Muslim populated area. Only with a view to ensure the applicant and his family leave that area, a false case has been lodged. The Court was taken through the relevant evidence on record to ultimately urge for allowing the application.

4. Learned APP and learned counsel appearing for the respondents-victims would submit that it is a serious offence. No false FIR could be lodged putting at stake the dignity of the girls, who were aged about 8 years and 7 years, respectively. The medical evidence reinforces the prosecution case. Both learned counsel, therefore, urged for rejection of the application.

5. Considered the submissions advanced. Perused the evidence relied on.

6. For little over one year, the applicant is in jail. The FIR was lodged by the father of one of the victims on 15.02.2021. It is his case that he has two sons and a daughter (one of the victims), aged 8 years. He works as a labour at brick kiln. It is his case that the applicant resides in the neighborhood. He has acquaintance with the family of the applicant. His daughter and the daughter (another victim) of his sister would visit the applicant's house to fetch buttermilk. On 14.02.2021, the informant's wife made phone call and asked the informant to come home. It is alleged that on that day, the informant's wife had asked the victims to go to the applicant's house to fetch buttermilk. The victims refused to go. They broke down and told the wife of the informant that about 14-15 days before, both the victims had been to the house of the applicant. The applicant took both of them in one room of his residence. He undressed both of them. He too removed clothes on his person. The applicant threatened both of them with a kitchen-knife. The applicant asked both the victims to consume urine and excreta. He also threatened both the victims that he would take them to jungle and cut into pieces. It is also the case of victims that the applicant tied both of them with a rope and made them to lie on the bed. He inserted his private part in the private part of

both the victims. The victims raised cries. The applicant applied sellotape on the mouth of one of the victims. Meanwhile, the applicant received a phone call of one of his family members. He then allowed the victims to leave his residence.

7. On the same lines is the evidence of the mother of one of the victims. Only one victim was examined. She reported the incident happened with her. The father (informant) of the victim also gave evidence consistent with the evidence of the victim and her mother. It may, therefore, appear that the offence has been duly proved and the trial Court was justified in convicting the applicant.

8. Admittedly, the applicant has been convicted for the offence of attempt to commit rape and/or penetrative sexual assault under Section 6 of POCSO Act. The alleged incident took place fifteen days before the FIR was lodged. It is in the evidence of one of the witnesses that the victim, who has not been examined as witness, had related the incident to her mother the same day. In such situation, the FIR of the alleged incident was expected to be lodged same day or at least, within some hours thereafter. A panch witness to the scene of offence has admitted that the applicant's

house is the only residence of a Hindu family at Barkat Nagar area. He meant to say that rest of the inhabitants of that area are Muslims. It is the case of applicant that with a view to evict him from that area, a false case was lodged. The Court may not buy this theory at this stage.

9. The fact remains that as against the sentence of ten years, the applicant is in jail for little over one year. It is reiterated that there is delay of 15 days in lodging of the FIR.

10. The medical examination report of the victim, who was examined as witness, suggests that since she was brought to the hospital fifteen days after the alleged incident, the Medical Officer found nothing objectionable during her medical examination. So far as the other victim not examined as witness, is concerned, the medical examination report suggests that there was old healed tear ruptured present. Peri-hymenal redness and inflammation was present.

11. The appeal is not likely to come up for hearing in the near future. The applicant is in jail for little over one year as against the sentence of ten years of imprisonment. There is delay of fifteen

days in reporting the incident to the police. These facts lead this Court to allow the application.

12. Hence, the order:-

(i) The application is allowed;

(ii) During pendency of the appeal, the substantive sentence of imprisonment imposed by learned Addl. Sessions Judge, Ambajogai, in Special POCSO Case No.53 of 2021, vide order dated 13.12.2022, to stand suspended. The applicant be released on bail on executing P.R. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

(iii) The applicant shall not stay in the area where the victims reside, pending the appeal.

(iv) Fee of learned counsel appointed to represent respondent nos.2 and 3 is quantified at Rs.6,000/- (Rupees Six Thousand)

[R.G. AVACHAT, J.]

KBP