

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

**923 CRIMINAL APPLICATION NO.163 OF 2021
IN APEAL/263/2020 WITH APEAL/263/2020**

**BHAGWANDAS S/O. GOVIND PAWAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mr. R. S. Deshmukh, Sr. Advocate a/w. Mr. Sanket A. Jadhav i/b. Mr. D. R. Deshmukh, Advocate for the petitioner.

Mr. P. N. Kutti, APP for the respondent/State.

Mr. Shriniwas Kulkarni, Advocate (appointed) for respondent No.2.

Mr. Suvidh Kulkarni, Advocate (appointed) for respondent No.3.

**CORAM : KISHORE C. SANT, J.
DATED : 10.01.2023**

PC :-

01. This is an application seeking stay to the order of conviction dated 29.02.2020 awarded by the learned Additional Sessions Judge-10, Aurangabad in Special Case Child Prot. No.165 of 2016, wherein the appellant – present applicant is held guilty for the offences punishable under sections 354-A(1)(iv), 354-D(1)(i), 506 of the Indian Penal Code and section 12 of the Protection of Children From Sexual Offences Act and sentenced to suffer rigorous imprisonment as per the order passed by the trial Court.

02. Present applicant has filed an appeal in this Court, which is already admitted. The application filed seeking suspension of sentence is already allowed. Now by way of this application, the petitioner is seeking stay to conviction on the ground that because of this conviction, he is compulsorily retired from the service by order dated 28.07.2020. His case is that if stay is granted to the conviction, his order compulsorily retiring him would be cancelled in an appropriate proceeding.

03. It is case of the applicant that though he is held guilty of the offence, there is no sufficient evidence on record to prove his guilt. This Court is taken through the evidence of PW-1, PW-2, PW-3 and PW-4 to show that none of the witnesses could give exact details in respect of the offence, as regards mobile number of the applicant, exact date of the incident etc. Further, it is pointed out that it has come in the evidence of all these witnesses that this applicant is member of employees Credit Co-Operative Society and there are two groups in the said Society of ITI, wherein one Mr. Rathod and present applicant are actively involved. The group of Mr. Rathod and group of present applicant are rivals and it is because of this rivalry, said Mr. Rathod has instigated the informant his relative, to lodge the complaint. The applicant further submits that the appeal is of 2020 and it may not reach in the near future and therefore that would cause serious prejudice to the career of the

applicant as till the appeal is decided, the applicant will not be in a position to get service benefits.

04. It is further submitted by the applicant that it has come in the evidence of a girl student and others that this applicant was not their teacher and therefore there was no question of his giving any assurances in the career or that he would give some marks in the examination etc.

05. Learned APP opposed the application vehemently saying that this is an offence involving moral turpitude. The girls were minor when the incident took place. Even the provisions of the POCSO Act are attracted and the applicant is found guilty of the offences under the provisions of the POCSO Act. In the tender age of a girl, it is quite natural to believe in the words of the instructor in the ITI, though he may not be their teacher. He submits that there is no possibility merely because there was some rivalry between two groups, they would use minor girl as their tool by making false allegations. Several instances have been shown, which are occurred with the girls and therefore he opposed the application submitting that the applicant does not deserve any relief.

06. Heard learned Mr. Shriniwas Kulkarni for respondent No.2. He

submits that there is presumption in respect of offences under section 12 of the POCSO Act, though it is rebuttable, but it cannot be gone into at this stage while considering the application.

07. Learned Advocate Mr. Suvidh Kulkarni for respondent No.3 submits that merely because CDR record is not produced on record would not by itself lead to conclusion that the prosecution has failed to prove guilt of the accused and prayed for rejection of the application. He also relied upon judgment of the Hon'ble Supreme Court in the case of Central Bureau of Investigation, New Delhi Vs. M.N. Sharma arising out of SLP (Cri) No.3106 of 2007 to canvass that when offence is involving moral turpitude, no stay be granted to the accused person lightly unless exceptional circumstances are shown. In this case, no exceptional circumstances are shown to exist, where the benefit can be extended to the accused-applicant.

08. Considering the submissions and considering that the offence is involving moral turpitude, this Court finds that there is no merit in the application. This Court also finds that at this stage this Court cannot go into the question by considering minute details. Thus, there is no merit in the application. Same is dismissed.

09. At this stage, learned Sr Advocate Mr. Deshmukh prays that the appeal be expedited. Looking to the fact that the applicant has lost his job and if the conviction is set aside, he again has chance of reinstatement in the service, the appeal is expedited.

[KISHORE C. SANT, J.]