

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

**955 CRIMINAL APPLICATION NO.1359 OF 2023
IN APEAL/678/2022**

Shaikh Feroz Shaikh Gani

...Applicant

VERSUS

1. The State of Maharashtra

2. X.

...Respondents

...

Advocate for Applicant : Ms. Ashwini A. Lomte h/f Mr.Salunke
Sudarshan J.

APP for Respondent No. 1-State : Mr.N.T.Bhagat
Advocate for the Respodnent No. 2 Informant : Mr.Sharad
Shinde

...

CORAM : R. G. AVACHAT, J.

DATE : 25.04.2023.

PER COURT :

1. Heard.

2. This is an application for suspension of execution of substantive sentence of imprisonment.

3. The applicant has been convicted for the offences punishable under Sections 4 and 6 of the Protection of Children from Sexual Offences Act (for short "POCSO"). The maximum

sentence of imprisonment is 20 years for the offence under Section 6 of the POCSO.

4. The applicant is said to have committed rape on his own daughter, a 13 years old girl, at the relevant time. The evidence indicates that on the given date, the applicant came home heavily drunk. There is evidence to indicate that there used to be frequent quarrels between the applicant and his wife. Once the applicant met with an accident and his lower limb was operated upon. Even, due to applicant's alcoholism, his wife and children had been once deserted him and were residing at the house of his in-laws. The victim in her evidence stated that the applicant came home heavily drunk. The mother was also at home. Since the younger brother of the victim started crying, her mother took him out of the house for a while. Taking advantage there of, the applicant bolted the door from inside of the house and committed rape of the victim.

5. There is evidence of the victim's mother to indicate that when she returned home, she saw the victim in some improper condition. She, therefore, took her into confidence to learn the applicant to have committed rape on her daughter.

She therefore, immediately took the victim first to the hospital. The Medical Officer directed them first to lodge the First Information Report. The record indicates that within an hour of the alleged incident, the victim was medically examined. The medical examination report of the victim and the Doctor's opinion indicate that there were no signs of forceful intercourse. Still, the Medical Officer did not rule out the sexual intercourse. On what basis he has given such opinion is not known. The C.A. report, particularly, the vaginal swab etc. do not indicate the existence of semen. As such, it is a case to rely on the sole testimony of the victim.

6. True, it can be said that a daughter would not falsely implicate her own father. There is, however, evidence to indicate that due to heavy alcoholism of the applicant, there used to be frequent quarrels between him and his wife. On the given day also, there was quarrel between them. On hearing the quarrel, her sisters got frightened and had slept in the back side of the room. The quarrel continued for about one and half hours. None intervened to subside the quarrel. On the very day, the applicant beat up his wife. The victim further testified that although her mother did not beat up her husband, she abused

him.

7. The aforesaid evidence indicate the applicant to have a reason to contend that the FIR has been lodged at the behest of his wife, mother of the victim. The applicant is in jail for little over 4 years and 3 months. The appeal is of the year 2022, the same is not likely to be heard in near future. Therefore, the Court is inclined to allow the application. Hence, the following order :

ORDER

- (a) The application is allowed.
- (b) Pending the appeal, the execution of substantive sentences of imprisonment imposed upon the applicant by the learned Additional Sessions Judge-5, Aurangabad in Special Case (POCSO) No. 47 of 2019, by the judgment and order dated 01.01.2022 to stand suspended and the applicant be released on bail on executing P.R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety each in the like amount.
- (c) The fees of the learned Advocate appointed to represent the informant/respondent No. 2 is quantified for Rs. 8,000/- (Rs. Eight Thousand Only).

(d) The order shall not be carried into effect, until the fine amount is deposited in the trial Court.

(R. G. AVACHAT)
JUDGE

mahajansb/