

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

**INTERIM APPLICATION NO. 1834 OF 2023
IN
CRIMINAL APPEAL NO. 573 OF 2023**

Avdhut @ Jayu Shantaram Rane ...Applicant

Versus

The State Of Maharashtra and Anr. ...Respondents

Mr.Aniket Nikam a/w Mr.Amit Icham, Advocate for Applicant.

Mr. A. R. Patil APP for the Respondent No.1-State.

Mr. Pawan Mali appointed for Respondent No.2.

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 1st NOVEMBER 2023

PC.:

1. This is an application for suspension of sentence and grant of bail during the pendency of Criminal Appeal preferred by Applicant challenging the judgment of conviction.

2. Applicant/Original accused No.1 is convicted by the learned Sessions Judge, Sindhudurg, Oros under Sections 376(2), 376-D, 354(A)(1)(i)(ii), 506 read with 34 of Indian Penal Code, 1860 and under sections 4, 8 & 12 of the Protection of Children From Sexual Offences (POSCO) Act, 2012 in Special Case (POCSO) No.13 of 2019 and sentenced to

suffer RI for twenty years and to pay a fine of Rs.4,800/-.

3. Heard learned Advocate for Applicant/Appellant, learned APP for Respondent-State and learned Advocate for Respondent No.2.

4. Learned Advocate for Applicant argued on the merits of conviction by referring to the evidence of prosecution witnesses and submitted that evidence is unreliable and there are contradictions, omissions and improvements and therefore, the same is unbelievable. It is argued that, due to family dispute with the cousin, Applicant is falsely implicated in the matter at the instance of her uncle, who is in police department. It is alleged by the prosecution that victim was sexually assaulted by Applicant in his own house and at that time applicant's wife and parents were present in the house, which is not believable. Victim has admitted that her uncle is Police Sub-Inspector and his relation with father of Applicant are not cordial therefore, Applicant is falsely implicated in the crime. There is delay in lodging the FIR as offence has taken place in March 2017 whereas the FIR is lodged on 13th October 2017. The allegations of prosecution are unbelievable also on the ground that DNA report of child/baby body delivered by victim does not match with DNA of Applicant.

Therefore, the prosecution has failed to prove charge against Applicant beyond reasonable doubt. Further submission is that in spite of their being alleged forceful sexual intercourse by accused No.1 and accused No.3, victim was behaving normal and attending her day to day chores, it is only after she became pregnant and delivered baby boy that the offence since in question is registered against accused.

5. Learned APP and learned Advocate for Respondent No.2 opposed the application by supporting impugned judgment of conviction. They submit that evidence of victim is sufficient to warrant conviction of Applicant. There are no contradictions or omissions. The improvements alleged by Applicant are of minor nature. Applicant since has repeatedly committed sexual assault on the victim, hence he is rightly convicted. It is therefore, submitted that no case is made out by Applicant for suspension of his sentence of imprisonment.

6. I have given careful consideration to the rival submissions by learned counsel. Perused the evidence of prosecution witnesses and impugned judgment. I am of the prima facie opinion that findings recorded by trial Court are sustainable as there is sufficient evidence that Applicant has committed the offence for which he is convicted. In this view

of the matter, I do not wish to elaborate the reasons in this order as the appeal filed by Applicant is pending for hearing and final disposal. No case for bail, pending appeal, is made out. Hence, the following order:-

- (i) Interim Application stands rejected.
- (ii) Hearing of Criminal Appeal is expedited.

(NITIN B. SURYAWANSHI, J.)