

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 3470 OF 2023
IN
CRIMINAL APPEAL NO. 1061 OF 2023

Azar Ikbal Mujawar	...Applicant
Versus	
The State of Maharashtra & Anr.	...Respondents

Mrs. Anjali Awasthi i/b Mr. Balwant Salunkhe for the Applicant/Appellant.

Mr. J.P.Yagnik, A.P.P for the Respondent-State.

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.**
DATE : 29th NOVEMBER, 2023

P.C. :

1. Heard learned Counsel for the parties.

2. By this application, the applicant seeks suspension of his sentence and enlargement on bail, pending the hearing and final

disposal of his aforesaid appeal.

3. The applicant, vide Judgment and Order dated 7th September, 2023, passed by the learned Special Judge, Jaysingpur, in POCSO Special Case No. 11 of 2016, has been convicted for the offences punishable under Sections 363, 376(1) of the Indian Penal Code and Section 6 of the POCSO Act. The maximum sentence imposed on the applicant is under Section 6 of the POCSO Act i.e. to suffer imprisonment for life.

4. Learned Counsel for the applicant submits that having regard to the testimony of the prosecutrix and the medical evidence, it is doubtful whether any such offence as alleged had taken place i.e. of sexual assault. Learned Counsel relied on the evidence of Medical Officer, P.W.14 – Dr. Padmashree Bindage in support of her submissions and the evidence of the prosecutrix who is P.W.2. She submits that although there are no suggestions in the cross-examination of P.W.2 and P.W.5, as to why they would falsely implicate

the applicant, in the aforesaid offence, the applicant in his statement recorded under Section 313 of the Cr.P.C. has set out the reasons for his false implication. Learned Counsel for the applicant submits that one witness i.e. Shitaldada, who saw the motorcycle of the applicant and who shouted as “Police..Police..”, was not examined by the prosecution and as such, implicit reliance cannot be placed on the testimony of the prosecutrix.

5. Mr. Yagnik, learned APP vehemently opposes the bail application. He submits that the prosecutrix was a minor studying in standard VI at the relevant time and that, the evidence of the prosecutrix has been duly corroborated by her sister i.e. P.W.5 and the evidence of the Medical Officer, P.W.14 – Dr. Padmashree Bindage.

6. Perused the evidence. The applicant, aged around 35 years, has been convicted for kidnapping and sexually assaulting a minor i.e. P.W.2, who at the relevant time, was studying in standard VI. The prosecutrix i.e. P.W.2, in her evidence has stated that the incident took place on 27th August, 2016 and that whilst returning

from the dance class with her sister, they saw one person (applicant) standing beneath a mango tree, on his motorcycle. She has stated that the applicant told her that his mother was ill and asked her to show the road of Borgaon. She has stated that she showed the road, however, the applicant asked her to sit on the motorcycle and show him the road. She has further stated that when she told him that she will ask her mother, the applicant twisted her hand, tried to throttle her and forcibly took her on his motorcycle; thereafter, the applicant took her to a field where he undressed her and sexually assaulted her. She has further stated that one person i.e. Shital dada saw the motorcycle and shouted as “Police...Police..”, pursuant to which, the applicant ran away, after which, the villagers took her home and the FIR came to be lodged.

7. We have perused the cross-examination of the prosecutrix. To a great extent, there is no cross-examination of the prosecutrix, with respect to the initial part of para 2 of her evidence. No suggestion was made by the applicant, as to why the prosecutrix was

falsely implicating him. The said evidence of P.W.2 is duly corroborated by P.W.5, her sister who was also present there at the relevant time. No suggestion has also been given to the said witness as to why she would falsely implicate the applicant. The evidences of both the said witnesses is also corroborated by the medical evidence i.e. of P.W.14 – Dr. Padmashree. P.W.14 has stated that on medical examination, she found three lacerations on the perineal region. She has set out the reasons for the injuries and that on examination of the victim, there was evidence of sexual assault.

8. The evidence of P.W.2 & P.W.5 has also been corroborated by their parent's evidence and the evidence of the owner of Dance class where the P.W.2 and P.W.5 had gone on the day of the incident.

9. Mere non-examination of Shital dada would not render the evidence otherwise on record, suspect.

10. Considering the aforesaid, we are of the view that this is not a fit case to enlarge the applicant on bail.

11. The application stands rejected. However, hearing of the appeal is expedited.

12. All concerned to act on the authenticated copy of this order.

GAURI GODSE, J.

REVATI MOHITE DERE, J.