

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 198 OF 2023
WITH
INTERIM APPLICATION NO. 696 OF 2023
IN
CRIMINAL APPEAL NO. 198 OF 2023**

Danish Akram Khan	.. Appellant/ Applicant
Versus	
The State of Maharashtra and anr	.. Respondents
...	

Mr. Vashisth Kumar Arora a/w Mr. Pravin Gaikwad, Mr. Shahrukh Siraj Shaikh, for the appellant/applicant.
Mr. Nitesh Mohite, for the respondent no.2
Ms. P.N. Dabholkar, APP for the State.

**CORAM: BHARATI DANGRE, J.
DATED : 28th MARCH 2023**

P.C:-

1 IA No. 696 of 2023 is taken out by the applicant/appellant, who has called in question the judgment dated 21/01/2023 delivered by the Joint District Judge and Additional Sessions Judge, Nashik, in Special POCSO Case No. 299 of 2021, by which he stand convicted for the offence punishable under Section 8 and 12 of the POCSO Act and he is sentenced to suffer RI for 2 years and for 1 year respectively. The substantive sentences having been directed to run concurrently. He has undergone sentence of 1 month and 18 days upon his conviction under the impugned judgment.

2 The applicant is accused of committing an offence punishable under Section 363, 354, 354 A(ii) and 506 of IPC and Section 8 and 12 of the POCSO Act, 2012. The investigating machinery was set into motion when the informant/the mother of the victim visited her daughter's school, she was informed by the class teacher that she has not come to the school. Upon a search being taken, she was not found, but at about 10:45 am, she was traced by her own brother behind the school. When it was inquired with her, she revealed that when she reached to the gate of the school at 8:45 am by a auto-rikshaw, in which she used to commute to the school, the accused came there and under the guise that her father had called her to the house, forcibly carried her in his four-wheeler and took her to a lodge. She was informed by him that her father is also present there and on being taken in a room, the door was bolted and he forcibly pulled and embraced her and kissed her and even took a selfie. When she started screaming, somebody knocked the door, which was opened by her and she told the person that the accused is not letting her go out. The said person scolded him and and i.e. how the accused got her back to the school. She was however threatened that she shall not disclose the incident to anybody.

3 In order to establish its case, the prosecution examined the victim girl as well as maternal uncle of the victim. The mother/informant examined herself as PW-1 and reiterated the incident narrated by her daughter PW-2.

4 On appreciation of the evidence, the learned Judge arrived at a conclusion that no offence is made out under section

363 as well as 506 of IPC.

The aforesaid conclusion is derived on the basis of evidence, which are surfaced on record, to the effect that the Investigating Officer has categorically deposed that the CCTV footage collected within the precinct of the school, clearly record the victim girl walking on her, towards the car of the accused and was not forced, as was narrated by her. However, the applicant is found guilty of committing an offence under Section 8 and 12 of the POCSO Act.

5 When the evidence on record is carefully looked into, the evidence of PW 9, a servant in the hotel, where the girl was alleged to have been taken forcibly, divulge that the girl entered in the Hotel with the accused in a fourwheeler. She stated her date of birth to be 2001 and even signed the concerned register of the hotel, where a room was taken on in exchange of Rs. 500/-, on the pretext that they wanted to freshen up. As per the said witness the accused and the girl went into the room, but within 10 minutes they came back.

In the cross-examination he specifically depose that the girl was in a normal condition when she came to the hotel and she also remained normal when she left the hotel. In the cross-examination, he specifically state that he was the only servant working in the hotel that day and it did not happened that somebody knocked and opened the door, which was allotted to the accused nor he was informed that any such incident had taken place.

This version of PW-9 has made the prosecution case doubtful and specifically the version of the victim girl, who is a key witness, who has alleged that the accused had kissed her and pulled her closer, which had resulted in invoking of Section 8 and 12 of the POCSO Act.

6 The counsel for the appellant would submit that this inconsistency in the case of the prosecution reflect towards its case being imaginary and fictitious and which deserve an appreciation at the time of hearing of the appeal. I find sufficient substance in this submission which necessarily warrant his sentence being suspended during the pendency of the appeal. Hence the application is allowed by suspending the sentence imposed upon the the applicant under the impugned judgment.

He is directed to be released on bail, on furnishing PR bond of Rs. 25,000/- with one or more sureties with the like amount. It is also informed to me that the applicant was on bail through out the trial and he has never misused the liberty. This is an additional ground, he deserves the relief as prayed in the application.

(SMT. BHARATI DANGRE, J.)