



Shailaja

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.1418 OF 2023
IN
CRIMINAL APPEAL NO.450 OF 2023**

Vishnu Rama Shelke	]	
Age: 57 years, Occ: Agriculture,	]	
R/o. Aadaigaon, Taluka Panvel,	]	
District Raigad.	]	Applicant (Orig. Accused)
Versus		

1. The State of Maharashtra	]	
(Notice to be served upon A.P.P.	]	
High Court, Appellate Side,	]	
Mumbai.)	]	
2. XYZ,	]	
Age: 34 years, Occ: Household,	]	
R/o. Adai, Taluka Panvel,	]	
District Raigad.	]	Respondents

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Mr. Shekhar Ingawale i/b Ms. Prachi Tatake, for Applicant.

Mr. A.R. Kapadnis, A.P.P, for Respondent No.1-State.

Mr. Vinod S. Chate a/w Ms. Kalpana V. Chate i/b Chate & Associates, for Respondent No.2.

Mr. Sumit Kendre, P.S.I. Khandeshwar Police Station present.

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**CORAM : PRITHVIRAJ K. CHAVAN, J.
RESERVED ON : 9th August, 2023.
PRONOUNCED ON : 21st August, 2023.**

ORDER:

1. Applicant has been convicted by the Additional Sessions Judge, Panvel – Raigad in Special (POCSO) Case No.273 of 2020

on 27th March, 2023 of the offences punishable under sections 354 of the Indian Penal Code (for short “I.P.C”) and 7, 8, 9 (m) (p) and 10 of The Protection of Children from Sexual Offences Act, 2012 (for short “POCSO”), however, in view of section 42 of the POCSO Act, he was sentenced to undergo rigorous imprisonment for a period of five years with fine of Rs.5,000/-.

2. The applicant has prayed for suspension of execution of sentence pending the appeal.

3. Heard learned Counsel for the applicant and the learned A.P.P.

4. Learned Counsel for the applicant, at the outset, would argue that there is a variance in the evidence of P.W.1-complainant, who is mother of the victim *vis-a-vis* First Information Report (for short “F.I.R”). The F.I.R reveals that the victim who was then five years old was dragged by the applicant on 30th March, 2018 at about 7.00 p.m in a room. However, when the victim made a hue and cry, neighbourers arrived at the spot and then the applicant released his grip from the hand of the victim. However, in her evidence, the

complainant had testified that what had been stated to her by the victim is that the applicant took her in a room and then he tried to force him upon her.

5. Learned A.P.P has invited my attention to the evidence of P.W.3-Santosh Bhagat and P.W.4- Sameer Bhagat. Learned A.P.P has strongly opposed the application by stating that dragging the victim by the applicant itself establishes his intention. He further submits that there is no reason to disbelieve the evidence of the victim.

6. The victim who was 13 years old at the time of recording her evidence had also testified that on the date of the incident, the applicant asked her to accompany him in a room. When she refused, the applicant dragged her in a room and tried to touch her clothes. She, therefore, raised a hue and cry, upon which, two to three neighbours came for her rescue. The victim bit his hand and, therefore, he released her. The victim escaped from the spot.

7. In her statement before the J.M.F.C, which came to be recorded on 2nd April, 2018, the victim had stated that the applicant tried to drag her in a room and also attempted to lift her. When the

neighbours came for her rescue, he left her. *Prima facie*, there is variance in the evidence of the victim *vis-a-vis* the complaint lodged by her mother and the evidence of her mother. Even if, at this stage, there is some variance, the fact remains that the applicant was present at the relevant time being a neighbour of the complainant and also was on visiting terms with the complainant.

8. In the cross-examination of the complainant, it has been elicited that some time the applicant used to drop the victim to the school. If the victim was familiar with the applicant, there was no reason for her to raise hue and cry unless she realized his intention who tried to drag her in a room against her wish.

9. In his statement under section 313 of the Cr. P.C, the applicant admits that on the date of the incident, the complainant and her husband were not at home and the victim was playing in the courtyard of the house. There seems to be no reason for the complainant to falsely implicate the applicant in this case.

10. It is pertinent to note that the applicant was aged about 55 years at the relevant time. *Prima facie* evidence is sufficient to

attract ingredients of section 354 of the I.P.C. Admittedly, he is neighbour of the victim who is around 13 years of age when her evidence was recorded on 17th January, 2023. Release of the applicant on bail by suspending execution of sentence would definitely affect her mental state, psychology and normal behaviour as and when the applicant would be seen by her.

11. P.W.3 – Santosh Bhagat testified that he had seen the applicant running away from his house. Similar is the evidence of P.W.4- Sameer Bhagat who had seen the victim going towards her house crying as well as witnessed mother of the victim abusing the applicant.

12. Even if the applicant was on bail during trial, as argued by the Counsel, that in itself would not be enough to suspend execution of sentence pending the appeal for the reasons stated hereinabove.

13. As such, at this stage, I am not inclined to suspend execution of sentence pending the appeal. Since there is no merit in the application, it is rejected.

14. In view of rejection of the application, liberty to the applicant to pray for expeditious hearing of the appeal.

15. Application stands disposed of.

[PRITHVIRAJ K. CHAVAN, J.]