

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

**INTERIM APPLICATION NO.2450 OF 2022
IN
CRIMINAL APPEAL NO.1027 OF 2021**

Jastinraj Joseph John Applicant
Versus
The State of Maharashtra & Anr. Respondents

Ms.Apeksha Vora, Advocate for the Applicant.
Mrs. M.R. Tidke, APP for the Respondent No.1-State.
Ms. Ameeta Kuttikrishnan, Advocate (appointed) for the
Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 19th JANUARY, 2023

P.C. :

1. This is an application for bail pending final disposal of the appeal.

2. Heard Ms.Apeksha Vora, learned counsel for the applicant, Smt. M.R. Tidke, learned APP for the Respondent No.1-State and Ms. Ameeta Kuttikrishnan, learned appointed counsel for the Respondent No.2.

3. The applicant was convicted by learned Special Judge under POCSO Act for Greater Mumbai vide his judgment and order dated 23.8.2021 passed in POCSO Special Case No.435/2018. The applicant was convicted for commission of the offence punishable under Section 4 of the Protection of Children From Sexual Offences Act, 2012 (for short, 'POCSO Act') and was sentenced to suffer RI for eight years and to pay fine of Rs.15,000/- and in default to suffer RI for four months. He was convicted under Section 363 of IPC and was sentenced to suffer RI for one year and to pay fine of Rs.5,000/- and in default to suffer RI for two months. He was also convicted for commission of the offence punishable under Section 376 of IPC but in view of the sentence under Section 4 of the POCSO Act, no separate sentence was imposed.

4. The prosecution case is that the victim was about 14 years of age at the time of incident. Her date of birth was 13.2.2004 and the incident had occurred on 18.6.2018. On that day she had not gone to her school. At about 5.30 p.m.

she had gone outside of her house to play with her friends. She was with her friends till late hours in the night. It is the prosecution case that the applicant came there on his motorcycle, took her in a small hutment and committed rape on her.

5. Learned counsel for the applicant submitted that the identity of the offender is seriously in doubt. The test identification parade is held much belatedly. The pancha for arrest of the applicant and for the test identification parade was the same and, therefore, reasonable doubt is raised about the genuineness of the test identification parade.

6. She submitted that the victim's friend is not examined and the applicant examined that friend's mother. The defence witness has categorically stated that the victim was not with her friend. She submitted that thus the basis of the prosecution case is false and, therefore, the applicant could not have been convicted.

7. Learned counsel for the respondent No.2 as well

as learned APP submitted that the medical evidence supports the victim's case and the test identification parade establishes the identity of the applicant. They opposed this application on these grounds.

8. I have considered all these submissions. I have also perused the evidence of the victim who is examined as PW-1 as well as the medical evidence. The victim's medical evidence is in the form of PW-3 i.e. the Medical Officer who had medically examined the victim. The victim's version is supported by the medical officer. Therefore, at this stage, there is sufficient material against the applicant. However, all these points are left open to be decided at the final hearing stage. This evidence is sufficient for rejection of the bail application.

9. The applicant is in custody since June, 2018. The record and proceedings with paper books are received. Therefore, the appeal itself can be listed for final hearing. Hence, the following order :

:: O R D E R ::

- i. The application for bail is rejected.
- ii. The appeal be listed on the weekly final hearing board commencing from 20.2.2023.
- iii. Interim Application is disposed of accordingly.

PRADIPKUMAR
PRAKASHRAO
DESHMANE

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(SARANG V. KOTWAL, J.)

Deshmane (PS)