

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

**INTERIM APPLICATION NO.2484 OF 2022
IN
CRIMINAL APPEAL NO.746 OF 2022**

Chhabi Mohan Soni ..Applicant/Appellant
Versus
The State of Maharashtra & Anr. ..Respondents

Mr. Ashraf Ali Akhtar Shaikh a/w Ibrahim Shaikh & Rui Danawala, for
the Applicant/Appellant.

Mr. A. R. Kapadnis, APP for the Respondent/State.

Mr. Ratnesh M. Dube, Legal Aid Advocate for the Respondent No.2.

**CORAM : NITIN W. SAMBRE &
R. N. LADDHA, JJ.**

DATE : 24th FEBRUARY, 2023

PC.

1. This is an application for suspension of sentence and grant of
bail.

2. Counsel for the applicant/appellant made three fold
submissions :-

- (a) that the victim was below 18 years which fact is not
established;
- (b) the identity of the victim is also not established; and
- (c) there are contradictions *qua* the evidence of complainant/PW-
1 and victim/PW-2.

3. With the assistance of respective counsels, we have perused the aforesaid evidence.

4. The fact remains that the offence came to be registered upon a complaint lodged by PW-1, mother of the victim. During investigation, the fetus was subjected to DNA test, same was found to be matched with the applicant. Apart from above, PW-1 in her cross-examination has stated that victim was born at home and as such, there is no concrete evidence as regards her date of birth. In such an eventuality, the Court below has considered various evidence on record, so also ossification test and as such, it is inferred that the victim was minor at the time of commission of offence. The fact remains that the accused has availed tiffin facility from the complainant/victim, so also the complainant known to the applicant of which he has taken undue advantage in the matter of commission of offence. As such, no case for grant of relief is made out.

5. The application as such stands rejected.

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]