

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

**INTERIM APPLICATION NO. 2654 OF 2023
IN
CRIMINAL APPEAL NO. 358 OF 2022**

Ramesh Bhola Shrivastav ... Applicant

Versus

State Of Maharashtra ...Respondent

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Ms. B. Vilasini, Advocate for the Applicant.

Mrs. M. M. Deshmukh, Addl. PP for the Respondent – State.

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**CORAM : PRAKASH D. NAIK, &
N. R. BORKAR, JJ.**

DATE : 20th DECEMBER, 2023.

P.C.:

1. This is an application for suspension of sentence and grant of bail during the pendency of Criminal Appeal No.358 of 2022.

2. The applicant is convicted vide Judgment and order dated 20th June 2019 passed by the Special Judge under the Protection of Children from Sexual Offences Act, 2012 (for short ‘POCSO Act’) for offences punishable under Sections 3, 4, 5(n), punishable under Section 6 of the POCSO Act r/w Section 376(2)(f), 323 and 506(1) of Indian Penal Code (for short “IPC”). The maximum sentence imposed by the trial Court is imprisonment for life.

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3. The case of the prosecution is that the applicant is the father of the victim girl. The victim girl was subjected to forceful sexual intercourse. During the course of investigation statements of various witnesses were recorded. The medical examination of the victim was conducted. Charge-sheet was filed.

4. Learned Advocate for the applicant submitted that the applicant is suffering from HIV. He is in custody for a period of about 8 years. Medical evidence does not support the prosecution case. There are no external injuries on the person of the victim. The testimony of the brother of victim is doubtful. The victim has falsely implicated the applicant as the dispute is between the applicant and his wife. The relevant witnesses are not examined by the trial Court. Ossification test was not conducted. There is doubt about the age of the victim girl. The prosecution has not proved that victim girl was minor at the time of the alleged incident.

5. Learned A.P.P. submitted that there is sufficient evidence to convict the applicant. The version of the victim cannot be doubted. She has categorically stated that the applicant/accused who is the father has subjected her to sexual assault. The evidence of the brother of victim girl (PW-4) also supports the prosecution case. He has stated that after he went out, the door

was closed from inside and when he returned to the house and after the door was opened he found that the victim was crying. It is not necessary that there has to be existence of external injuries. The medical evidence supports the prosecution case. C.A. report indicate that human blood was also found on the cloths of the victim. The medical report indicates that although the applicant was suffering from HIV, his health is stable. The report is placed on record.

6. We have perused the evidence on record. It is pertinent to note that at this stage it is not possible to discard the evidence of the victim girl. The evidence of brother of the victim and the other circumstances are sufficient to reject the application for suspension of sentence. However, considering the fact that the applicant is in custody for a period of about 8 years, hearing of appeal is expedited.

ORDER

- i. Interim Application No.2654 of 2023 is rejected and disposed of.
- ii. Hearing of appeal is expedited.
- iii. As soon as the paper book is ready, the appeal may be added to the final hearing board.

(N. R. BORKAR, J.)

(PRAKASH D. NAIK, J.)