

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

**INTERIM APPLICATION NO.3433 OF 2021  
IN  
CRIMINAL APPEAL NO.1068 OF 2021**

Appa Yashwant Salve ...Applicant  
Versus  
The State of Maharashtra & Anr. .... Respondents

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Mr. Sachin H. Deokar, Advocate for the Applicant.  
Smt. M.R. Tidke, APP for the Respondent No.1-State.  
Mr. Madhusudan D. Pareek, Advocate (appointed) for  
Respondent No.2.

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**CORAM : SARANG V. KOTWAL, J.  
DATE : 9<sup>th</sup> FEBRUARY, 2023**

**P.C. :**

1. This is an application for bail pending final disposal of Criminal Appeal No.1068/2021.

2. The applicant was convicted and sentenced by the Additional Sessions Judge, Pune vide his judgment and order dated 13.11.2021 passed in Special POCSO Case No.290/2018. The applicant was convicted for commission of offences punishable under Section 376 of IPC and under Sections 4 and 6 of the Protection of Children From Sexual

Offences Act, 2012. The major sentence imposed on him was for ten years besides imposition of fine of Rs.1 Lakh and in default of payment of fine to suffer SI for six months.

3. Heard Shri Sachin Deokar, learned counsel for the applicant, Smt. M.R. Tidke, learned APP for the respondent No.1-State and Shri Madhusudan Pareek, learned appointed Advocate for the respondent No.2.

4. Learned counsel for the applicant submits that the applicant is in custody since 2018 and, therefore, more than four & half years have passed. He submitted that the victim was not available at the time of recording of her evidence as she had passed away. There is no material against the applicant showing that it was a forcible sexual intercourse. He submitted that the age of the victim was not established beyond reasonable doubt.

5. Learned APP as well as learned counsel for the respondent No.2 opposed these submissions. They relied on the observations in paragraph-19 of the impugned judgment,

which mentions that the date of birth of the victim was 28.1.2000. The DNA report shows that the victim and the applicant were the biological parents of the baby of the victim. Learned counsel submitted that the FIR was lodged on 13.5.2018 and the baby was delivered in June, 2018. Therefore, obviously the incident had taken place before the victim had turned 18 years.

6. Considering the submissions made by learned counsel for the respondent No.2, it does appear that the offence is made out against the applicant. However, this will have to be finally decided at the final hearing stage and on the basis of material available on record. At this stage, no case for bail is made out. The application is rejected. Considering that the applicant is in custody for a considerable period, the appeal is expedited. The applicant is at liberty to make an application for early hearing of the appeal.

**(SARANG V. KOTWAL, J.)**