

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

**INTERIM APPLICATION NO.3945 OF 2022
IN
CRIMINAL APPEAL NO.1151 OF 2022**

Mahadeo Mallesha Birajdar & Ors. Applicants

versus

State of Maharashtra & Anr. Respondents

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- Mr. Prashant Kamble i/b. Mr. Vikrant V. Phatate, Advocate for Applicant.
- Mr. S. R. Agarkar, APP for the State/Respondent No.1.
- Mr. Nitesh Mohite (Appointed) Advocate for Respondent No.2.

**CORAM : SARANG V. KOTWAL, J.
DATE : 18th JANUARY, 2023**

P.C. :

1. The Applicants were tried before Additional Sessions Judge (Special POCSO Court Solapur) in Sessions Case No.122 of 2017 vide Judgment and Order dated 01.11.2022. The Applicant No.1 was convicted for commission of offence punishable under Section 8 of Protection of Children from Sexual Offence Act (for short 'POCSO') and was sentenced to

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suffer rigorous imprisonment for three years besides the imposition of fine. All the Applicants were convicted for commission of offence punishable under Sections 363 read with Section 34 of the Indian Penal Code (for short 'IPC') and were sentenced to suffer rigorous imprisonment for three years besides imposition of fine. They are acquitted from the offence punishable under Sections 341, 366A read with Section 34 of IPC. The Applicant No.1 was acquitted from offence punishable under Section 354A of IPC and of the offence punishable under Section 12 of POCSO Act.

2. Learned counsel for the Applicants submitted that they were on bail during trial. They have not misused that liberty. He further submitted that even after conviction they were granted Interim Bail under Section 389 of the Code of Criminal Procedure. According to him the prosecution case is not proved beyond reasonable doubt. At the time of the incident, the victim was 17 years and 11 months old. Her date of birth was

14.02.1999 and the incident had taken place on 03.02.2017.

Her evidence shows that the Applicant No.1 was a relative.

3. According to the prosecution case, the victim's house was at some distance from her college. The applicant No.1 came in a car and offered to drop her to her house. He was accompanied by the applicant No.3. Based on their offer, the victim sat in the car. The applicant No.1 was her relative. After some time, the applicant No.3 got down and the applicant No.2 entered the car. It is alleged that the applicant No.1 assaulted and threatened the victim. She was taken to Muchandi village where the car broke down. The villagers got suspicious and informed the police. In the meantime, the offence was registered at Vijapurnaka police station vide C.R. No.68/2017. The officers of that police station went to Jat police station. The applicant Nos.1 & 2 were arrested. The applicant No.3 was arrested subsequently.

4. Heard Mr. Prashant Kamble, learned counsel for the Applicant, Mr. Nitesh Mohite, learned counsel for the Respondent No.2, and Mr. S. R. Agarkar, learned APP for the State.
5. Learned counsel for the applicants submitted that nobody from Muchandi village was examined. Even the police officers from Jat police station were not examined.
6. Learned counsel for Respondent No.2 submitted that the prosecution case is that the victim was assaulted by the accused No.1. A sickle and an iron rod were found in the car.
7. I have considered these submissions. There is nothing to show that the victim had suffered any injuries or she had sought help from anybody. The victim was travelling with the accused for quite some distance and during all this time, she had not sought any help. The sentence imposed is short i.e. for three years and the Appeal is not likely to be decided within that period. As mentioned earlier, the Applicants were on bail during

trial. There are no allegations of misuse of liberty. Even after their conviction, the Applicants were granted bail u/s 389 of Cr.PC.

8. Considering all these aspects, the Applicants can be granted bail during pendency and final disposal of the Appeal.
9. Hence, the following order :

ORDER

- (i) During pendency and final disposal of the Criminal Appeal No.1151 of 2022, the Applicants are directed to be released on bail on their furnishing P.R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand only) each, with one or two sureties each, in the like amount.
- (ii) Interim Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)