

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

**INTERIM APPLICATION NO.4271 OF 2022
IN
CRIMINAL APPEAL NO.1222 OF 2022**

Kamruddin Mohammad Rafiq Shaikh Applicant
Versus
The State of Maharashtra & Anr. Respondents

Ms. Apeksha Vora, Advocate for the Applicant.
Mr. S.R. Agarkar, APP for the Respondent No.1-State.
Ms. Ameeta Kuttikrishnan, Advocate (appointed) for the
Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 22nd FEBRUARY, 2023

P.C. :

1. This is an application for bail pending the applicant's Criminal Appeal No.1222/2022. The applicant has challenged the judgment and order dated 17.11.2022 passed by the Special Judge under POCSO Act, Greater Mumbai in POCSO Special Case No.249/2014. The applicant was convicted for commission of the offences punishable under Sections 363 and 376 of IPC and under Sections 3 read with 4 of the Protection of Children from

Sexual Offences Act, 2012 (for short, 'POCSO Act'). The major sentence imposed on him was for seven years besides imposition of fine.

2. Heard Ms. Apeksha Vora, learned counsel for the applicant, Shri S.R. Agarkar, learned APP for the respondent No.1-State and Ms. Ameeta Kuttikrishnan, learned appointed advocate for the respondent No.2.

3. The prosecution case is that the victim's date of birth was 18.8.1998. The victim had close relationship with the applicant. On one occasion when her family members had gone out, the applicant came to the victim's house and told her that he would perform marriage with her. He took her to Lucknow. They stayed with the accused No.2 who was the applicant's friend. The applicant took her to a Court and the marriage was performed. They had sexual intercourse in the house of the accused No.2. After two to three days, the police came there and took her to the police station.

4. Learned counsel for the applicant submitted that

it was a clear case of consent. The age of the victim is not proved beyond doubt. Though a certificate purporting to be the birth certificate was produced on record at Exhibit-37, it mentions that there was no birth registration number and that it was registered belatedly. Therefore, there is serious doubt about that birth certificate. Her ossification test was not conducted and, therefore, there is nothing to show that the victim was below 18 years of age. She submitted that the applicant was on bail during trial and he has not misused that liberty.

5. Learned APP opposed this application on merits.

6. Learned appointed counsel for the respondent No.2 had interacted with the respondent No.2 and learned appointed counsel has clearly submitted before the Court on instructions that the respondent No.2 does not have any objection for granting bail to the applicant and that she has no grievance against the applicant any more.

7. I have considered these submissions. The victim's evidence does strongly indicate that it was a

consensual physical relationship. The date of birth of the victim is not beyond doubt. Sufficiently reasonable doubt is created regarding her date of birth.

8. Considering all these aspects, the applicant can be granted bail pending his appeal. He was on bail during trial.

9. Hence, the following order :

:: O R D E R ::

- i. During pendency and final disposal of Criminal Appeal No.1222/2022, the applicant is directed to be released on bail on his furnishing P.R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- ii. The applicant shall not harass the victim or her family in any manner.
- iii. Interim Application is disposed of accordingly.

Digitally signed
by
PRADIPKUMAR
PRAKASHRAO
DESHMANE
Date:
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(SARANG V. KOTWAL, J.)

Deshmane (PS)