

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

**INTERIM APPLICATION NO.1545 OF 2022
IN
CRIMINAL APPEAL NO.518 OF 2022**

Sanjiv Baburao Chavan

.... Applicant

versus

State of Maharashtra & Anr.

.... Respondents

.....

- Ms. Rutuja H. Khatmode i/b. Umesh R. Mankapure, Advocate for Applicant.
- Smt. Manisha R. Tidke, APP for the State/Respondent.
- Ms. Shraddha Sawant, appointed advocate for Respondent No.2.

**CORAM : SARANG V. KOTWAL, J.
DATE : 04th SEPTEMBER, 2024**

P.C. :

1. This is an application for bail pending Appeal. The Applicant was the accused before the Extra Joint Additional Sessions Judge, Karad in Special Case No.62/2020. The learned Judge vide his Judgment and Order dated 24/02/2022, convicted the Applicant for commission of offence punishable u/s 363, 376, 376(3) of the Indian Penal Code as well u/s 3,

4(2), 5(m) punishable u/s 6 & 7 r/w 8 of the Protection of Children from Sexual Offences Act, 2012. The major sentence imposed on him was u/s 376(3) of the Indian Penal Code and u/s 4 and 6 of the POCSO, as rigorous imprisonment for 20 years besides imposition of fine.

2. Heard Ms. Rutuja H. Khatmode, learned counsel for the Applicant, Ms. Shraddha Sawant, learned counsel for the Respondent No.2 and Smt. Manisha R. Tidke, learned APP for the State.
3. The Appeal is already admitted. I have heard the learned counsel for the Applicant as well as the learned counsel for the Respondent No.2 and the learned APP.
4. The prosecution case is that the victim was about 10 years and 7 months old at the time of incident. Her date of birth was 05/01/2010. The incident had occurred on 29/07/2020 at about 04.30 p.m. The victim was examined as P.W.2. She has deposed that on that date, at around 04.30 p.m., she had gone

to a shop to buy tobacco pouch for her father. When she was returning, the Applicant asked her to sit on his motorcycle. She refused, but he forcibly made her sit on his motorcycle. Then he took her to a sugarcane field of one Patil and committed rape on her. He had threatened the victim and therefore she did not inform this incident to anybody. But her private parts started paining and therefore, she told her mother on 02/08/2020 about the incident. Then the FIR was lodged. The Applicant was arrested. The investigation was carried out and the Applicant faced the trial.

5. The learned counsel for the Applicant submitted that the incident described by the victim is improbable. Her evidence is falsified by the medical evidence. This has to be seen in the backdrop of the dispute between the two families in respect of the boundary of their lands. The Applicant was arrested on 02/08/2020 and since then, for about four years, he is continuously in custody. The Applicant has no other criminal antecedents. The evidence against him is extremely weak. There

was delay in lodging the FIR. The case is false. She relied on the observations of the Hon'ble Supreme Court in the case of ***Sadashiv Ramrao Hadbe Vs. State of Maharashtra and another***, as reported in ***(2006) 10 Supreme Court Cases 92***, to support her contention.

6. Learned APP as well as learned counsel for the Respondent No.2 opposed these submissions. According to them, there was one more eyewitness i.e. P.W.6 who had seen the Applicant taking the victim on his motorcycle. They submitted that it is a settled law that the sole testimony of the prosecutrix is sufficient to base the conviction in such cases. They submitted that the victim was below 10 years and 7 months of age on the date of the incident.

7. I have considered these submissions and I have perused the evidence annexed to the paperbooks. There are some doubtful circumstances in the prosecution case. The incident had occurred at about 04.30 p.m. in the village. According to the

prosecution case, the victim was forcibly taken on a two wheeler from the shop, when she was returning home. But it is difficult to believe as to how she was forced to sit on the motorcycle and why she did not raise any alarm or sought help from the villagers. She was allegedly taken to a sugarcane crop field. P.W.6 was examined to show that he had seen the victim being taken on a two wheeler by the Applicant. However, in the cross examination, he has admitted that he had gone to the police station after the police had called him and that he had not told anybody about the Applicant taking the victim on his motorcycle. Therefore, it is not explained as to how the police came to know that this particular witness from the village had seen the Applicant taking away the victim on his two wheeler.

8. The most important circumstance in this case is the medical opinion given by P.W.5 Dr. Kurade who had examined the victim. She has categorically deposed that after the physical examination of the victim she had not found injuries on her body. There was no sign of use of force. No injury was noted on

her private parts. She had given her final opinion that there were no signs suggestive of vaginal intercourse. Her opinion is noted in Ex.19 produced on record mentioning the same opinion. In the context of the case, this opinion is extremely important. In this case, there is not only absence of corroboration to the prosecution case, but the medical opinion is contradictory to the victim's version. In that context, the observations of the Hon'ble Supreme Court in the case relied on by the learned counsel for the Applicant i.e. in the case of ***Sadashiv Hadbe*** (supra) are important.

The observations made in paragraph No.9 of that case reads thus :

“It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belie the case set up by the

prosecutrix, the court shall not act on the solitary evidence of the prosecutrix. The courts shall be extremely careful in accepting the sole testimony of the prosecutrix when the entire case is improbable and unlikely to happen.”

This has to be seen in the context of the admission given by the mother of the victim who is examined as P.W.1. She has accepted that there was boundary dispute between the victim’s family and the Applicant.

9. The Applicant is already in custody since 03/08/2020 i.e. for more than four years. The Appeal is not likely to be decided within a reasonable period. There are no other antecedents against the Applicant.
10. Considering these submissions, the Applicant can be granted bail during pendency of his Appeal.
11. Hence, the following order :

ORDER

- (i) During the pendency and final disposal of the Criminal Appeal No.518 of 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 cause any harassment to the victim or her family in any manner.
- (iii) Interim Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)