

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

**INTERIM APPLICATION NO.1724 OF 2023
IN
CRIMINAL APPEAL NO.591 OF 2022**

Lingaraj Nagesh Ganapa Applicant
Versus
The State of Maharashtra
and another Respondents

Mr. Ritesh Thobde, Advocate a/w. Ankita Pramod Rai for the Applicant.

Mr. V.A. Kulkarni, APP for the Respondent-State.

Ms. B. Sharada, Advocate (appointed) for the Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 26th SEPTEMBER, 2024

P.C. :

1. The Applicant was convicted by the learned Additional Sessions Judge, Solapur by her judgment and order dated 5.5.2022 in Special Case No.224/2021 under Section 376(3), 342 of IPC and under Section 4(2) of the Protection of Children From Sexual Offences Act, 2012 (for short, 'POCSO Act'). For the offence punishable under Section 4(2) of the POCSO Act, the Applicant was sentenced to suffer RI for twenty years and to pay a fine of Rs.5,000/- and in default to suffer imprisonment for

six months. For the offence punishable under section 342 of IPC, he was sentenced to suffer imprisonment for six months and to pay a fine of Rs.500/- and in default to suffer imprisonment for one month. The substantive sentences were directed to run concurrently. He was directed to be given set off under Section 428 of Cr.P.C. In view of Section 42 of POCSO Act, no separate sentence was imposed under Section 376(3) of IPC. He was acquitted under Sections 8 and 12 of the POCSO Act.

2. Heard Mr. Ritesh Thobde, learned counsel for the Applicant, Mr. V.A. Kulkarni, learned APP for the Respondent-State and Ms. B. Sharada, learned appointed counsel for the Respondent No.2.

3. Learned counsel for the Applicant submitted that the evidence indicates that it could be a case of sexual assault and not penetrative sexual assault. He submitted that the doctor who had examined the victim immediately, had left the service of the Civil Hospital, Solapur and the evidence was given by some other doctor. Therefore, the medical evidence is not reliable. In any case, no specific opinion regarding penetrative sexual assault was given by the earlier doctor and certainly not by the doctor who

deposed before the Court. He submitted that the previous statement of the mother of the victim does not indicate that it was a case of penetrative sexual assault.

4. Learned APP as well as learned counsel for the Respondent No.2 submitted that the evidence of the victim cannot be brushed aside. She has described the incident in detail. There is corroborative medical evidence. The mother's previous statement is neither contradictory nor it is pointed out to her to elicit her response about the alleged contradiction.

5. I have considered these submissions. The incident is dated 26.6.2021. The date of birth of the victim was 14.11.2006. Thus, she was under sixteen years of age. She has stated that the Applicant was having a shop in her locality. She went to his shop to purchase some grocery. At that time, the Applicant pulled her inside and took her to his house which was attached to his shop. She had then clearly described about the penetrative sexual assault. In the meantime, her grand-mother came searching for her. Thereafter she was allowed to go by the Applicant. When the victim reached home, she narrated the incident to her mother and then they approached the police station. Her deposition is quite

clear mentioning all the ingredients of Section 4(3) of the POCSO Act and of Section 376(3) of IPC.

6. The medical evidence is given by PW-6 Dr. Kinshu Maini, who was attached to the Civil Hospital, Solapur as the Medical Officer. He had joined the services of Civil Hospital, Solapur since December, 2021. The medical examination of the victim was carried out by Dr. Ninad Kade who had left the services of Civil Hospital, Solapur. PW-6 then produced the record kept in his hospital and based on that report he had deposed before the Court. In his deposition, he referred to the medical history given by the victim about the injury on 26.6.2021. Upon medical examination Dr. Ninad Kade had noticed that there was injury to her hymen. The edges were irregular. Bleeding was absent. Odema was absent. The Position of the tears was at 2, 6, 8 and 11 O'clock positions. The opinion of Dr. Kade was consistent with the possibility of sexual assault. The final opinion was kept reserved till availability of the clinical analysis report. The medical papers were produced on record at Exhibit-21. In that report, the entire history given by the victim, which is consistent with her deposition, was mentioned and the opinion was

mentioned that, “Evidence of sexual intercourse/assault cannot be ruled out. Hence, final opinion is kept pending till receipt of FSL reports”.

7. At the consideration of bail application pending Appeal, this material is sufficiently strong against the Applicant. The Court cannot embark upon a deeper analysis of the evidence than this. The sentence is twenty years which is a long sentence. In view of this situation, no case for bail pending appeal is made out. The Application is rejected.

(SARANG V. KOTWAL, J.)

Deshmane (PS)

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