

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

**INTERIM APPLICATION NO. 2175 OF 2024
IN
CRIMINAL APPEAL NO. 731 OF 2024**

Hanif Nalsab Shaikh

..Applicant.

Versus

The State of Maharashtra & Anr.

..Respondents

Mr. Swapnil R. Patil (appointed Advocate) for Applicant.

Mr. Shrikant H. Yadav, APP for State/Respondent.

Ms. Vilasini Balasubramian (appointed Advocate) for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 25 JULY 2024

PC :

1. The Applicant was the Accused before the Extra Joint Additional Sessions Judge, Karad, in Special Case No.40 of 2023. The learned Judge, vide her Judgment and order dated 10.11.2023 convicted the applicant for commission of the offence punishable U/s.7 r/w. Section 8 of the Protection of Children from Sexual Offences Act (hereinafter referred to as 'POCSO Act'). He was sentenced to suffer R.I. for three years and to pay a fine of Rs.7000/- and in default to suffer S.I. for two months. The

applicant was acquitted from the charges U/s.506 of the I.P.C.

2. Learned counsel for the Applicant submitted that the applicant had suffered six months of actual imprisonment out of the period of three years. The sentence is short. He submitted that, on merits, the applicant has a good case because PW-1-grand-mother of the victim has supported the applicant in the cross-examination; which shows true nature of the incident showing that the applicant is innocent.

3. Learned APP, as well as, the learned counsel for the Respondent No.2 submitted that the victim was only four and half years of age and, therefore, leniency may not be shown to the applicant.

4. I have considered these submissions. The prosecution case is in respect of the incident dated 06.06.2023. The victim in this case had gone to the applicant's house. The allegations are that the applicant had touched his private parts and was pressing it. The victim started shouting. Therefore, the informant's family members went there and saw the incident. It is alleged that the

applicant was not wearing his clothes fully. However, in the cross-examination of PW-1-the first informant, she had admitted that, when they saw the incident, the applicant was holding the victim for urination. The victim had medical issues for passing urine. The Applicant was holding him and only because of his medical issue, the victim shouted. All these admissions are in favour of the applicant, on merits. In any case, the sentence imposed on the applicant is short. The applicant is in custody for six months out of the imprisonment of three years. The applicant deserves to be released on bail during the pendency of his Appeal.

5. Hence, the following order:

O R D E R

- i) During the pendency and final disposal of Criminal Appeal No.731 of 2024, the Applicant is directed to be released on bail on his furnishing P. R. bond in the sum of Rs.30000/- with one or two sureties in the like amount.
- ii) The Application is disposed of.

(SARANG V. KOTWAL, J.)