

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

**INTERIM APPLICATION NO. 2934 OF 2023
IN
CRIMINAL APPEAL NO. 1241 OF 2023**

Sachin Vasant Kamble ...Applicant
Versus
The State Of Maharashtra And Anr. ...Respondents

Mr. Lokesh Zade, for Applicant (appointed through High Court Legal Services Committee).

Mr. V. A. Kulkarni, APP for Respondent No.1-State.

Mr. Patel Muzaffar Yassinshah for Respondent No.2-Victim (appointed through High Court Legal Services Committee).

CORAM : M. M. SATHAYE, J.

DATED : 28th NOVEMBER 2024

P.C.:

1. Heard learned Counsel for the Applicant / accused, learned APP for the Respondent No. 1-State and learned Counsel for the Respondent No. 2-Victim. Both the Advocates for the Applicant as well as the Respondent No. 2 are appointed through High Court Legal Services Committee.

2. This is an Application for interim bail during the pendency of the Appeal and for suspension of sentence. The Appeal is already admitted and pending for final hearing.

3. Under the impugned order dated 28/02/2019, the Applicant / Accused is convicted u/s. 3 & 4 of the POCSO Act and u/s. 376(f) and (i), 354, 354(A), 323 and 506 of the Indian Penal Code. The major sentence

awarded to the Applicant is to suffer rigorous imprisonment of 10 years.

4. The case of the prosecution is as under. PW3 Meena is complainant who is Aunty (Atya) of PW1 / Victim. Rahul is complainant's son. PW2 – Mahadev is brother in law of Complainant. Victim lost her parents and she had given up school and was residing with Complainant in her house. Applicant / Accused is son of Suvarna, who is maternal sister of Complainant. As such Accused is son of Victim's Aunty (Mavas Atya) Accused used to take painting work and he was given painting job of complainant's new house. On 10/06/2017, when the Complainant's son and brother-in-law went for their duties and the Complainant and her husband went to Jaysingpur to attend marriage, the victim was alone in the house. On that day, the Accused on the point of knife committed rape. The second incident took place on 13/06/2017, when the victim was forced to consume a tablet and thereafter accused committed rape. The victim was 13 years and 5 months old on the date of the incident as per the case of the prosecution.

5. It is the case that on 13/06/2017 at about 3.00 pm, the Complainant inquired with her brother-in-law – PW2 as to why the accused is not painting her house, that time, brother-in-law cursed and informed that at 2.00 pm when he returned from the shop to the house, door and windows were closed and when he knocked on the door, it was not opened. He stated that he opened the window and noticed that victim was lying on the bed and the accused was sitting next to her, both were naked and accused was trying to wake her up and he inferred that the Accused has committed rape on the victim. The Complainant immediately made inquiry with the victim, when the victim narrated both the incidents. Thereafter, a complaint was lodged.

6. Learned Counsel for the Applicant submitted that there is delay in lodging the Complaint. The last alleged incident is of 13/06/2017 while the crime is registered on 15/06/2017. It is submitted that in the medical report the hymen is found to be intact and no injury marks are found. It is submitted that if the alleged act is repeated twice, the hymen could not have remained intact. It is submitted that there is no sufficient evidence to indicate penetrative sexual intercourse, in fact medical opinion is expressed that there is no evidence of sexual intercourse. Radiological age of the victim is found to be 14 to 17 years. It is submitted that victim has not named the accused while narrating the medical history. He submitted that Victim was having affair with Complainant's son Rahul and there was gossip going on and Accused had seen them together and therefore he has been falsely implicated. He submitted that the Applicant is arrested in June 2017 and is in custody since then and therefore about 7 years and 6 months detention is already suffered, which almost 75% of the major sentence awarded.

7. Learned APP for the Respondent – State assisted by learned Counsel for the Respondent No. 2-victim submitted that over all evidence of P.W. No. 1-Victim must be seen and she has supported the case throughout. Even if radiology age is accepted, the victim is still minor. The incident was repeated. It is submitted that even a slightest penetration amounts to rape in case of offence under POSCO. It is submitted that P.W. No. 2 (brother-in-law) of the Complainant – Mahadev is eye-witness. It is submitted that there are 2 different versions of defence and therefore they are unbelievable. One is that there was love affair between the victim and the Complainant's son Rahul which the accused knew and in order to stop him from spreading news, he

was falsely implicated and the other is that the accused had seen them together in lonely place. It is submitted that since the Accused is in close relation, if bail is granted, he may harass the victim.

8. Learned Counsel for the Applicant contended that the Applicant is already convicted and therefore the apprehension of harassment etc. can be taken care of by imposing appropriate conditions.

9. I have considered the submissions. This is an Appeal of 2023 and it is not likely to be taken for final disposal shortly. Admittedly, the Applicant was arrested on June 2017 and as such, he has suffered detention for more than 7 years and 5 months. The major sentence is of 10 years.

10. In the facts and circumstances narrated above, considering the evidence on record and arguments advanced, I am inclined to grant bail. Hence, the following order:

(a) The remaining sentence of the Applicant – Sachin Vasant Kamble convicted under order dated 28/02/2019 passed in Spl. Child (POCSO) Case No. 48 of 2017 is suspended.

(b) The Applicant be released on bail on executing P.R. Bond of Rs.25,000/-.

(c) The Applicant is directed not to contact or approach or meet the victim. The Applicant is also directed to report to the concerned Police Station on 1st Monday of every month.

(M. M. SATHAYE, J.)