

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

INTERIM APPLICATION NO. 4469 OF 2023

in

CRIMINAL APPEAL NO. 1340 of 2023

Ganesh Hemant Jadhav

... Applicant/
Appellant

versus

The State of Maharashtra

.... Respondent

Mr. Rohan H. Barge, Advocate for the Applicant.

Mr. Prashant P. Jadhav, APP for the State.

Mr. Karthik Rajasekhar along with Mr. Arif Sayed, Advocate for
Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 15th OCTOBER, 2024.

P.C. :

1. By this application, the applicant is seeking suspension of sentence and bail in Special Case No.283 of 2017. The applicant has been convicted under Section 354-A (1)(i) of the Indian Penal Code 1860 and under Sections 8, 9 and 10 of Protection of Children from Sexual Offences Act 2012 (for short "POCSO") and sentenced to suffer rigorous imprisonment for 5 years and to pay fine of Rs.1,000/- in default, to undergo rigorous imprisonment for 3 months.

2. It is alleged that complainant, mother of victim had sent victim to Solapur at her relatives house. The victim resided at Solapur for 10-12 days. Her husband had brought victim at Barshi on 14th June 2017. Since then, the victim was having problem of vomiting, she was not talking with

anybody and she was always in frightened condition and not taking her meals properly. Therefore, on 12th July 2017, the complainant made enquiry with victim. At that time, the victim told her that she is having itching in her private part and has problem while discharging urine. She further narrated that when she went to Solapur for second time, at that time, the applicant called her twice in his house and showed her obscene videos on his mobile in absence of his family members. He pulled her hands, he removed his clothes and he had removed her clothes too and committed illegal act with her private part. The complainant observed the private part of the victim, there was swelling on her private part. She narrated the incident to her husband. Thereafter, complaint was lodged against the applicant. After trial, the applicant was convicted as referred above.

3. Learned counsel for the applicant submitted that the applicant has been falsely implicated in this case. There is delay of one month in lodging the complaint. The medical evidence does not support the prosecution case. Due to family dispute, false offence was registered against the applicant but these facts are not considered by the Special Court. At the time of the incident, the applicant was 19 year old. He is taking education. He is behind bar for more than one year. It may take time to dispose of the appeal. If the applicant remains behind bar, he will not be able to pursue his education and his life will be ruined. During trial, he was on bail. Hence, requested to allow the application.

4. It is contention of learned APP along with learned counsel for respondent No.2 that at the time of incident, the victim was 9 year old. The applicant outraged her modesty. The applicant is relative of the victim. In the evidence before the Special Court, it has come on record that the applicant has outraged modesty of the victim. Accordingly, he has been punished. If he is released on bail, he may abscond. Hence, requested to reject the application.

5. I have heard all learned counsel, perused the impugned judgment and order and evidence produced on record. There is delay of one month in lodging the complaint against the applicant. The applicant has been convicted for outraging the modesty of victim. During trial, the applicant was on bail. He has not misused the liberty. At the time of the incident, the applicant was 19 year old. He is behind bar for more than one year. He is a student and it may take time to dispose of the appeal. Considering these facts, I am inclined to allow the application.

6. In view of above, the applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of the appeal, on the following terms and conditions :-

ORDER

- i) The applicant be enlarged on bail on furnishing P.R.Bond in the sum of Rs.25,000/- with one or two sureties in the like amount;

7. Interim Application is allowed in the aforesaid terms and is accordingly disposed of.
8. All concerned to act on the authenticated copy of this order.

(SHIVKUMAR DIGE, J.)