

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.51 OF 2024
IN
CRIMINAL APPEAL NO.9 OF 2024

Terry Jojef Bhonkya : Applicant
Vs.
State of Maharashtra & Anr. : Respondents

Adv. Amresh Sharma, for the Applicant.
Adv. A. R. Patil, AGP for the State.
Adv. Seema Singh, appointed for the Respondent No.2.

CORAM : KISHORE C. SANT, J.

DATE : 4TH APRIL, 2024

PC. :

1. Heard learned Advocate for the Applicant, Learned APP for the State & Learned Advocate for the Respondent No.2.
2. This Application is for suspension of sentence and release of the Applicant on Bail. Applicant is convicted for offences punishable under Section 5(m) punishable under Section 6 of the POCSO, punishable under Sections 376, 354A(1)(i), 506 of the Indian Penal Code and Section 3 punishable under Section 4, Section 5A punishable under Section 6 & Section 7 punishable under Section 8 of the POCSO Act. He is awarded

punishment of 10 years R.I. and to pay fine of Rs.5000/- in default S.I. 3 months. No separate punishment is awarded for the offence punishable under Sections 3 & 4. The said Sections 3, 4, 7 & 8 of the POCSO and offences punishable under Sections 376, 354A(1)(i) for the offence under Section 506 of Indian Penal Code. His sentenced to suffer R.I. for 6 months and to pay fine of Rs.1000/- in default S.I. for 1 month.

3. Learned Advocate for the Applicant vehemently argued that the prosecution has not proved its case beyond doubt. There is variance between the statement of the victim and PW-2 i.e. mother of the Victim and also PW-4. He submits that the Medical Evidence is not sufficient. The Doctor has recorded that the injury to the hymen. He thus prays for suspension of sentence. He relied on the order passed by the Hon'ble Apex Court in the case of *Joy Rajendran Vs. The State of Maharashtra* in Criminal Appeal No.111 of 2023 wherein the Hon'ble Apex Court had allowing the Application for suspension of sentence on completion of 8 years out of 10 years of sentence.

4. Learned APP and Advocate for the Respondent No.2 vehemently argued the case submitting that on the evidence of victim and her mother is consistent on material aspects. The Doctor has also given evidence saying that to the hymen there was injury to the private part of

the victim. Victim was hardly of 6 years of age. The pray that the Application be dismissed.

5. This Court has *prima facie* gone through the evidence of the victim and the mother of the victim, their evidence is consistent on the material part. The incident is clearly stated by the victim. PW-4 has also deposed that the incident was narrated by the witness. The doctor in his evidence has stated that he found hymen injury present, edges torn, position of tears – 9 o'clock pointing out the history of sexual intercourse / assault.

6. Considering all the above mentioned, this Court finds that no case is made out to allow the Application.

7. The Application deserves to be dismissed and the same is hereby dismissed and disposed of.

(KISHORE C. SANT, J.)