

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**INTERIM APPLICATION NO. 655 OF 2023**  
**IN**  
**CRIMINAL APPEAL NO. 236 OF 2023**

Kiran Kesari Vaity ... Appellant/Applicant  
V/s.  
State of Maharashtra and Anr. ... Respondents

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Ms. Manisha Devkar, appointed advocate for the appellant.  
Mr. A.R. Patil, APP, for the State.  
Ms. Snehal Chaudhari, for respondent no. 2, (through legal aid).

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**CORAM : KISHORE C. SANT, J.**

**DATE : 9TH FEBRUARY, 2024.**

**PC:**

1. Heard the parties.
2. This application is for suspension of sentence and release of the applicant on bail in connection with the judgment and order passed by learned Special Court (POCSO), Greater Bombay in Sessions Case (POCSO) No. 92 of 2017 dated 21<sup>st</sup> December 2017. The applicant is held guilty of the offences punishable under section (6) of POCSO Act and under Section 376 (2) (j) of the Indian Penal Code. He is sentenced to suffer RI for 20 years and to pay fine of Rs. 25,000/-

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and in default, to undergo RI for 6 months.

3. Learned advocate (appointed) for the applicant vehemently argued that in fact the applicant is falsely implicated in the present case over the dispute in respect of construction of his house. There is a delay of one month in lodging the FIR. The incident is happened is of 21/22nd November 2016, whereas the FIR is lodged on 19<sup>th</sup> December 2016. There is no explanation for such delay. The age of the alleged incident is also not established by the prosecution. The mother of the victim had some places have said the incident took place on 25<sup>th</sup> December 2016 and at other place she has stated the date of incident is of 22<sup>nd</sup> November 2016. She submits that there is also no medical evidence on record except Doctor is oral evidence. She has also pointed out discrepancies from the cross-examination of the mother of victim and IO.

4. Learned APP pointed out from the evidence of PW-5-Dr. Which is consistent with the allegations informed for examination of the victim on genital examination that hymen was not intact. He thus submits that looking to the age of the victim there is no possibility of false implication of the accused and prays for rejection of the bail.

5. Learned advocate appointed through legal aid also opposed the application.

6. This Court with the help of the parties, perused the evidence to see *prima facie* case. This Court finds that the evidence of the victim of the mother clearly corroborated with each other. The

evidence is further corroborated by evidence of PW-5/Dr. No case from the present is made out to allow the application.

7. The application is thus rejected and the same is disposed of.

8. Since the applicant is in jail since 2016, the appeal is expedited and the appeal be added to the final hearing board.

**(KISHORE C. SANT, J)**