

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

***INTERIM APPLICATION NO. 1079 OF 2023
IN
CRIMINAL APPEAL NO. 1263 OF 2022***

Bapu Dharma Javale Applicant

Versus

State Of Maharashtra And Anr. Respondents

Mr. Mohansingh V. Rajput, Appointed Advocate a/w Mr. Sachin Ambulkar, for the Applicant.

Mr. V. B. Konde-Deshmukh, Addl. P.P. for the Respondent No. – State.

Ms. Priyanka B. Chavan, Appointed Advocate, for the Respondent No.2.

***CORAM : REVATI MOHITE DERE &
MANJUSHA DESHPANDE, JJ.***

DATE : 12th APRIL 2024

P.C. :

1. Heard learned Counsel for the parties.
2. By this interim application, the applicant seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of aforesaid appeal.

3. The applicant *vide* Judgment and Order dated 21st September 2019, passed by the learned Special Judge (POCSO), Pune, has been convicted, for the offences punishable under Sections 3, 4, 5 (l) (n) and 6 of the Protection of Children from Sexual Offences Act (“POCSO Act”) as well as under Section 376(2)(f)(i), 354, 506(1) of the Indian Penal code (“IPC”).

4. Mr. Rajput, learned Counsel for the applicant submits that the applicant has been falsely implicated in the said case, as is evident from the letter, which is at page No.59 of the paper book, i.e. Article ‘A’. He submits that there is discrepancy in the evidence of PW-2 i.e. victim girl and the evidence of the PW-8 Dr. Pallawad. He submits that the evidence of the Doctor will show that there was no penetration, and hence no offence as alleged by the prosecution is made out, against the applicant. He submits that even otherwise the statement of the victim girl i.e. PW-2 does not inspire confidence, having regard to what has come in the cross-examination of the said witness.

5. Mr. Konde-Deshmkukh, learned Addl.P.P. as well as Ms. Chavan, learned Counsel appearing for the respondent No.2 vehemently oppose the application. They submitted that the applicant has been rightly convicted for the offences as aforesaid. They further submitted that the evidence of the victim girl inspires confidence, and there is nothing in the cross-examination of the victim girl, so as to assail or suspect her credibility. It is submitted that in fact, it has come in the cross-examination what was disclosed by the victim girl before the learned Magistrate, which clearly shows that there was penetrative sexual assault.

6. Perused the papers, in particular the evidence of the victim girl. *Prima-facie* it appears that the victim girl i.e. PW-2 had no reason to falsely implicate her father i.e. the applicant, who sexually assaulted her. In fact, it has been brought in the cross-examination of the victim girl, as to what she had deposed before the learned Magistrate, although, an attempt was made to bring out a discrepancy between the victim girl's statement recorded before the Magistrate and the Police. It

appears from the cross-examination of the victim girl, that she was frightened on seeing the police, and that could be a reason for not setting out everything in detail, before the police i.e. her 161 statement. The statement recorded before the learned Magistrate has been brought on record, and more particularly the contents therein, in the cross-examination of the said witness. *Prima-facie* the evidence of the PW-2 inspires confidence.

7. Considering the *prima-facie* evidence qua the applicant, this is not a fit case to enlarge the applicant on bail. Hence, the application is rejected. However, since the applicant is in custody for more than seven years, the hearing of the aforesaid appeal is expedited. Matter to be added on the final hearing board, at its appropriate place in the week commencing from 10th June, 2024.

8. Interim Application stands disposed of accordingly.

MANJUSHA DESHPANDE, J.

REVATI MOHITE DERE, J.