

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

**INTERIM APPLICATION NO. 2583 OF 2023
IN
CRIMINAL APPEAL NO. 897 OF 2023**

Mohammad Razaulla Isrial Ansari ... Appellant/Applicant
Accused No.2

Vs.

The State of Maharashtra & Anr. ... Respondents

**WITH
INTERIM APPLICATION NO. 2995 OF 2023
IN
CRIMINAL APPEAL NO. 922 OF 2023**

Afrinbano Guljar Ahmad Khan ... Appellant/Applicant
Orig. Accused No.3

Vs.

The State of Maharashtra & Anr. ... Respondents

Mr. Swapnesh Sandesh Salvi a/w Ms. Ummehani E. Tambawala i/by Mr.
R.G. Gadgil for the Accused Nos.2 and 3.

Mr. Sandeep Bhupat Satkar for the Respondent No.2.

Mr. A. R. Patil, APP for State.

CORAM : KISHORE C. SANT, J.

DATE : 3RD JANUARY, 2024

PC.:-

1. Heard the parties.
2. These Applications are preferred by original Accused Nos. 2 and 3 who were convicted for the offences punishable under Section 109 read with 376 of the Indian Penal Code and under Section 17, read with 6

and 21 of Protection of children from Sexual Offences Act, 2012 ('POCSO Act'). They are sentenced to suffer R.I. for 10 years and to pay fine of Rs.5,000/- each, in default to undergo simple imprisonment for the period of 15 days. For the offence punishable under Section 21 of POCSO, they are sentenced to suffer R.I. for 6 months. No separate sentence is imposed for the offence punishable under Section 109 read with 376 of the Indian Penal code, in view of Section 42 of the POCSO Act. They are acquitted of the offence punishable under Section 120-B of the Indian Penal Code, 1860. In short the case of the prosecution is, Accused Nos. 2 and 3 facilitated and helped the Accused No.1 in committing offence. The Accused No.1 is also convicted under Sections 376, 506(ii) of the Indian Penal Code read with 6 of the POCSO Act. However, the Accused No.1 has not preferred any Appeal.

3. Learned Advocate for the Applicant vehemently argued that, there is no specific role attributed to this Applicant. Prosecution has not examined any eye witnesses and none of the witnesses is an independent witness. The allegation against Accused No.3 is that he took the photographs of the victim. However, no such photographs are seized and produced on record. There is no direct evidence to connect the present Applicants with the offence. At the most what appears from the evidence is that they introduced the victim to the Accused No.1 in good faith except

that there is no evidence. He submits that this is a fit case for grant of bail by suspending his sentence and place to along the Application.

4. The learned APP submits that, the prosecution has clearly established its case by giving sufficient evidence, age of the victim is not doubted from the deposition of the victim. It is clearly stated that it is this applicant who took the victim to the Accused No.1. They also put the victim under pressure and asked her to submit the Accused No.1 and not to disobey his command. He further submits that, there is no cross-examination on the point of role of this Applicant and hence prays to reject the Application.

5. Learned Advocate for the Respondent No.2 (appointed) adopts the argument of the learned APP. He further submits that, victim and the Accused persons are staying in the same locality. If the Accused persons are released on bail it would adversely affect victim and the society. It is seen that clearly a role is attributed to the present Applicant. Victim was put under pressure the Accused person thereafter left the victim & the Accused No.1 in one room where the incident took place.

6. This evidence is not shattered in the cross-examination. *Prima facie* this Court find there is no case made out for bail by suspending

sentence the Interim Application deserves to be rejected & the same is hereby rejected and disposed off.

7. The learned Advocate appointing for Respondent No.2 shall be entitled decree as per rules.

(KISHORE C. SANT, J.)