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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 2980 OF 2023

IN

CRIMINAL APPEAL NO.398 OF 2023

Mohammad Babu Ghorl : Appellant/Applicant

Vs.

The State of Maharashtra & Anr. : Respondents

Adv. Aniesh S. Jadhav (appointed Legal Aid) a/w Rushikesh Kekane for the Appellant/Applicant.

Adv. Vrushali Maindad a/w Adv. Mahenoor Khan i/by Adv. Shaheen Kapadia for the Respondent No.2.

Mr. M. R. Tidke, APP for the State.

CORAM : KISHORE C. SANT, J.

DATE : 16th JANUARY, 2024

PC. :

1. Heard the learned Advocate for the parties. The Appeal is already admitted.

2. R & P is received.

3. This Application is therefore taken. In addition to paper-book the learned Advocate for the Applicant has also produced on record a compilation of the relevant papers including the depositions.

4. The main submission of the learned Advocate for the

Applicant is that, there is no sufficient medical evidence on record to support the allegations of the prosecution. The second submission is that the medical officer who was examined as PW-5 did not personally examine the victim girl. The certificate on record is not issued by this witness. The medical officer who issued medical certificate is not examined. There is variance between the depositions of PW-1 & PW-2 that is mother and uncle and PW-3 that of victim.

5. He invited attention to the medical certificate, he submits that no injuries are seen on any part of the body. It seem the coloum VI, clause-B labia majora left sided minimal-inflammation. He submits that it is suggested to the witness No.5 that these injuries are possible even accidental fall etc. He submits that except this there is no medical evidence. He further submits that from the victim's deposition it has come that the accused was treating the victim like his daughter along with his own daughter. He used to treat the victim as his own daughter etc.

6. Learned APP submits that, the Learned Trial Court has considered the medical certificate in detail and has rightly come to conclusion that there is sexual assault on the victim.

7. The learned Advocate (appointed) for Respondent No.2, she submits that the learned Trial Court has rightly appreciated the facts and

the evidence. She invited attention to Section 5(m) of the POCSO Act, She further submits that the age of the victim was only here 11 years that is under 12 years and this factor also needs to be considered.

8. This Court finds that they are minor discrepancies in the evidence of PW-1, 2 & 3. Prima facie those appear to be immaterial. This Court has gone through his statement recorded under Section 164 of the victim and also her deposition. The Applicant is married person who was 38 years of the age at the time of the incident. Considering all there factors this Court finds that no case is made out for grant of bail by suspending the substantive sentence, hence the Application stands rejected. Learned Advocate for the Applicant as well as Respondent No.2 are appointed through legal aid. This Court appreciate their efforts. They shall be entitled to the fees as per rules.

(KISHORE C. SANT, J.)