

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

**INTERIM APPLICATION NO.4319 OF 2023
IN
CRIMINAL APPEAL NO.259 OF 2024
WITH
INTERIM APPLICATION NO.4320 OF 2023**

Akshay Kisan Chaudhari ..Applicant
Versus
The State of Maharashtra & Anr. ..Respondents

Mr. Sangram B. Suryavanshi, for the Applicant.
Mrs. A. R. Tidke, APP for the Respondent/State.
Mr. Advait Tamhankar, for the Respondent No.2.

CORAM : KISHORE C. SANT, J.

DATE : 27th MARCH, 2024

PC.

1. Heard learned advocate for the Applicant and learned advocate for Respondent No.2.

2. Interim Application No.4319 of 2023 is filed for bail and Interim Application No.4320 of 2023 is filed for suspension of sentence in connection with judgment and order of conviction passed by learned Special Judge (POCSO) and Additional Sessions Judge, Nashik dated 20.06.2023 in Special (POCSO) Case No.158 of 2021. Applicant is held guilty for the offence punishable under Section 4 of POCSO Act. Applicant is sentenced to suffer RI for 10

years and to pay fine of Rs.1000/-, in default of payment to suffer further RI for two months. This Court has seen the evidence of victim/PW-1 and PW-6/doctor, who examined the victim. It is the version of the victim that the accused called her to one room and established physical relations with her. She stated that the incident took place twice though by consent. The evidence of doctor supports the case of the prosecution. Learned advocate for the Applicant vehemently argued that it was consensual relation. No external injuries are found on the person of the victim. He further relies on the evidence of PW-3 one Pramod Pundalik Sirsath, who didn't identify the accused. The mother of the victim herself told him not to disclose the incident. He thus submits that the entire case of the prosecution appears to be suspicious. Applicant is falsely implicated by the mother of the victim, as the accused had lent loan of Rs.15,000/- to her and so as to avoid payment of such loan amount, mother of the victim has concocted the story.

3. Learned APP and learned advocate for the Respondent No.2 submits that the victim's statement is consistent. She has given minute details of the incident. The evidence of mother and the doctor supports the statement of the victim. They opposed the prayer of bail and suspension of sentence.

4. After hearing the parties, this Court finds that the evidence of the victim is duly corroborated by the medical evidence and by the evidence of other witnesses. Though it appears that the

relation was consensual and no force is appeared, the victim was hardly 14 years of age. On looking to the fact that the victim was a child at the time of incident, her consent is not material. Considering above factor, this Court finds that no case is made out to allow these Applications.

5. Both these Applications therefore stand rejected.

6. Since rejection of Applications for suspension of sentence and grant of bail, hearing of the Appeal is expedited.

7. The name of Mr. Advait Tamhankar, learned counsel for the Respondent No.2 is wrongly mentioned as "Amey Tamhankar" in the order dated 5th March, 2024, same be read as "Mr. Advait Tamhankar".

[KISHORE C. SANT, J.]