

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 4234 OF 2023
IN
CRIMINAL APPEAL NO. 1052 OF 2023

Shahnawaz @ Taufiq Mohammed ... Appellant/Applicant
Sagir Qureshi

V/s.

The State of Maharashtra and Anr. ... Respondents

Mr. Viqar Rajguru with Mr. Azeem Khan, for the applicant.

Mr. B.V. Holambe-Patil, APP, for respondent/State.

Ms. Keral Mehta, for respondent no. 2, (appointed)

CORAM : KISHORE C. SANT, J.

DATE : 7TH MAY 2024.

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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 dated 4th May 2023 passed by learned Special Judge under POCSO Act, Greater Mumbai. The applicant is held guilty of the offences punishable under Sections 376 and 354(a) of the Indian Penal Code and under Sections 6, 10 and 12 of the Protection of Children from Sexual Offences Act, 2012. The sentences are as below:

Sr. No.	Sections	Punishment	Fine Amount
1.	6 of POCSO	R.I. 20 years	Rs. 15,000/- and in default, to undergo for one years.
2.	10 of POCSO	R.I. 5 years	Rs. 1,000/- and in default, to undergo for three months.
3.	12 of POCSO	R.I. 3 years	Rs. 1,000/- and in default, to undergo for three months.

4. The victim was directed to be paid compensation under POCSO.

5. The prosecution story in short is that the victim age 4 years was sexually assaulted by the applicant who stays in the same locality on 3rd August 2020 and 17th August 2020. FIR came to be lodged on 18th August 2020. It is alleged that on 3rd August 2020 the applicant kissed the victim girl and on 17th August 2020 he kissed victim and he touched all over body of the victim and then he inserted his fingers in the vagina of the victim girl. There is medical evidence supporting the case of the prosecution. The Doctor has opined on examination that he found bruise bluish colour seize of 2cm x 2cm present in right iliac. There is fresh bite marks at about 12 to 24 hrs present on the right upper arm and left upper back at the lower scapular margin. On local examination of genital he found there was blood tear of the hymen. There were fresh injuries. There was complete circular hymenal tear was present. The mother of the victim who was examined as PW-2 stating in her evidence that after first incident of 3rd August 2020, she

told the applicant not to do such act again. However no complaint was filed. Incident dated 17th August 2020 took place as it was more serious and had taken place even after warning the applicant and she lodged complaint with the police. Thus on this evidence the Court recorded guilt of the accused.

6. Learned advocate for the applicant vehemently argued the application stating that the injuries were caused on 17th August 2020 still evidence of the Doctor's report the injuries were fresh, when he examined the victim on 19th August 2020. He submits that medical evidence thus cannot not be relied. As regards lodging of the offences he submits that there is a delay in lodging the FIR. There was no explanation. He submits that one of the witnesses i.e. PW. 5 who happened to be uncle of the victim has stated in his evidence that he saw the incident, however, still did not stop the accused. His conduct thus appears to be unnatural. He prays for bail.

7. Learned advocate for the respondent no. 2 vehemently opposed the application she submits that the evidence of PW-1 is consistent to her 164 Statement. She submits that delay is rightly explained as parties were residing in a small community therefore it is natural for the mother of the victim not to lodge immediate complaint. After second incident she lodged a complaint as inspite of warning the accused repeated the offence. She has taken this Court to the deposition of the victim recorded in questions and answers.

8. Learned APP also pointed out from the evidence of the victim that he had specifically stated that the applicant has done this act twice. He thus submits that the evidence is consistent. So both the advocates pray for rejection of the application.

9. After hearing the parties this Court finds that there is corroborative evidence of the victim. Though it is argued that victim has not told specific time of the incident, looking to the age of the victim this Court finds that it is not expected of a child of 4 years to give exact time of the incident. So far as the medical evidence is concerned, at this stage it cannot be minutely gone into when the Court is only dealing with the application for suspension of sentence. About the delay in lodging the FIR is concerned, this Court is not convinced by the submissions of the learned advocate for the applicant.
10. Considering all above this Court is of opinion that no case is made out for suspension of sentence and release of the applicant on bail. Hence the application stands dismissed.
11. Appeal expedited.

(KISHORE C. SANT, J)