

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

**INTERIM APPLICATION NO.4536 OF 2023
IN
CRIMINAL APPEAL NO.1348 OF 2023**

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Shoeb Sayeed Khan ..Applicant
Versus
The State of Maharashtra & Anr. ..Respondents

Mr. M. A. Khan & Tajammul Khan, for the Applicant.
Mrs. M. R. Tidke, APP for the Respondent/State.
Mr. Meher S., PSI, V. B. Nagar Police Station – present.

CORAM : KISHORE C. SANT, J.

DATE : 3rd APRIL, 2024

PC.

1. Heard learned advocate for the Applicant.
2. This Application is filed for suspension of sentence and release of the Applicant on bail. Applicant is accused No.2 in Special Case No.1049 of 2021, who is held guilty for the offence punishable under Sections 363, 354,, 366-A, 376, 506(II) r/w 34 of IPC and Section 4 of POCSO Act. Applicant is sentenced to undergo RI for 20 years and to pay fine of Rs.7000/-. Accused No.1 is also convicted for the offence under Sections 363, 354,, 366-A, 376, 506(II) r/w 34 of IPC and Section 4 of POCSO Act and sentenced to undergo RI for 20 years and to pay fine of Rs.7000/-. Accused No.3 is also convicted for the same offence and awarded punishment of 20 years and fine of Rs.7000/-.

3. It is the case of the present Applicant that looking to the evidence, it is seen that the present Applicant has not played any role. The only allegation against the present Applicant is that he helped accused Nos.1 and 3 in searching a room where the incident allegedly took place. He thus prays for suspension of sentence and release on bail.

4. Learned APP vehemently opposes the bail application submitting that the present Applicant was very much aware of the intention behind searching a room for the accused No.1 and the minor victim girl and prays for rejection of the Application.

5. This Court has seen the evidence of the victim, PW-1 and one neighbour, who is examined as PW-3. The victim in her evidence stated that the accused No.3, who happened to be neighbour took the victim with her to Titwala. Accused No.3 contacted the present Applicant and told him to make arrangement for a room. At Titwala, they met accused Nos.1 and 3. Accused No.1 and the Applicant were searching for a room, but they could not get any room at Titwala and therefore they came back to Titwala Station at about 11:00 p.m. Thereafter all the accused went to one dilapidated house for shelter at night along with victim girl. At that place, accused No.1 committed forcible sexual intercourse with the victim. Thus, it is seen that the accused No.2 accompanied other accused persons and the victim. He also tried to search a room and when they could not get a room, he took other accused and the

victim to one dilapidated house and he also stayed with other accused. Looking to the fact that the victim is hardly 14 years of age, it is clear that the accused had knowledge for what purpose the room is required. He didn't make any inquiry about the relation between the victim and other accused. At this *prima-facie* stage, this Court finds that the accused had knowledge of the intention of accused Nos.1 and 3. Even from the evidence of PW-3, it is seen that the accused No.3 was in regular touch with accused No.2 and always used to talk with each other on mobile. Looking to this evidence also, it cannot be believed that accused No.2 was not aware of anything and innocently helped accused in searching a room. At this stage, this Court is not convinced with the argument of learned advocate for the Applicant.

6. The Application therefore deserves to be dismissed and same is hereby dismissed.

7. Applicant is at liberty to move this Court for early date of hearing, if the Appeal is not heard in reasonable time.

8. The Application stands disposed of.

[KISHORE C. SANT, J.]