

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

**INTERIM APPLICATION NO.877 OF 2024
IN
CRIMINAL APPEAL NO.285 OF 2024**

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Dinbandhu @ Sanjay Jamun Sah ..Applicant
Versus
The State of Maharashtra & Anr. ..Respondents

Mr. Nikhil D. Patil, Appointed Advocate for the Applicant.
Mr. Vinit A. Kulkarni, APP for the Respondent/State.
Mr. Ankit Pandey, Appointed Advocate for the Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 26th AUGUST, 2024

P C.

1. This is an Application for bail pending Appeal. The Applicant was convicted for commission of offences punishable under Sections 376(f)(i)(I), 377 of IPC and under Section 6 of POCSO Act. The major sentence imposed on him was rigorous imprisonment for twenty years and to pay fine of Rs.1000/- and in default to suffer simple imprisonment for four months.

2. Heard learned counsel for the Applicant, learned APP for the Respondent/State and learned counsel for Respondent No.2.

3. The prosecution case is that the Applicant was the real father of the victim in this case. According to the prosecution case,

the date of birth of the victim was 15th August, 2006. The Applicant committed rape on his own daughter at their native place in Bihar on 20th June, 2019 and thereafter, he repeated that act in their house in Mumbai on 17th August, 2019. The victim's mother i.e. the Applicant's wife did not support her. The victim was helpless and she informed about this incident to her neighbour, one Anjali. The victim used to visit Anjali's house. With the help of Anjali and others, she approached the Police. The FIR was lodged by the said Anjali at Kasturba Marg Police Station on 19th August, 2019. The Applicant was arrested and faced the trial.

4. Learned counsel for the Applicant submitted that the victim had some relationship with a boy in the neighborhood. The Applicant and his wife were opposing that relationship and therefore, the victim has falsely implicated the Applicant. He further submitted that there is contradiction between the evidence of PW-1/Anjali and PW-2/victim in respect of the incident, which had taken place in the Applicant's house on 17th August, 2019. According to him, if the incident had occurred on 17th August, 2019, the victim could not have approached the first informant on 17th August, 2019 at around 11 a.m., as narrated by PW-1/first informant. He submitted that the Applicant has other children, who are dependent on him. Therefore, bail should be granted to the Applicant.

5. Learned APP and learned counsel for the Respondent

No.2 opposed these submissions. They invited my attention to the medical evidence, which supports the victim's case. They submitted that the offence is very serious. The sentence is for twenty years. The Applicant does not deserve to be released on bail.

6. I have considered these submissions.

7. I do not find any contradictions in the evidence of PW-1 and PW-2. The incident had occurred on 17th August, 2019 at around 01:00 a.m. Thereafter in the morning PW-2 had met PW-1 and then the FIR was lodged on 19th August, 2019. The evidence of the victim is supported by the medical evidence, which is brought on record through the evidence of PW-4/Dr. Abhade. According to her, the sexual assault on the victim could not be ruled out. There is no cross-examination of the victim/PW-2 regarding her relationship with another boy and the possible reason for false implication. The offence is serious and the sentence is for twenty years. Considering the gravity of the offence and the quantum of sentence in the backdrop of the evidence against the Applicant, the Applicant cannot be released on bail during pendency of his Appeal.

8. The Application is rejected.

(SARANG V. KOTWAL, J.)