

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

**INTERIM APPLICATION NO.958 OF 2024
IN
CRIMINAL APPEAL NO.471 OF 2024**

Accused Applicant

versus

State of Maharashtra & Anr. Respondents

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- Mr. V. S. Tiwari a/w Priya Muthupandi a/w Priti Tiwari, Advocate for Applicant.
- Ms. Ranjana D. Humane, APP for the State/Respondent.
- Ms. Vilasini Balasubramanian, appointed advocate for Respondent No.2.

**CORAM : SARANG V. KOTWAL, J.
DATE : 31st JULY, 2024**

P.C. :

1. This is an application for bail pending Appeal. The Applicant was the original accused in POCSO Special Case No.316 of 2017, before the Special Judge under POCSO, Greater Mumbai. The learned Judge convicted and sentenced the Applicant vide his Judgment and Order dated 04/03/2023 for the offences punishable u/s 6 of the the Protection of Children from Sexual

Offences Act, 2012 and section 506 of the Indian Penal Code. He was sentenced to suffer rigorous imprisonment for 10 years for the offence punishable u/s 6 of the Protection of Children from Sexual Offences Act, 2012 and to pay a fine of Rs.10,000/- and in default to suffer simple imprisonment for six months. He was sentenced to suffer rigorous imprisonment for one year for the offence punishable u/s 506(II) of the Indian Penal Code. All the substantive sentences were directed to run concurrently.

2. Heard Mr. V. S. Tiwari, learned counsel for the Applicant, Ms. Vilasini Balasubramanian, learned counsel for the Respondent No.2 and Ms. Ranjana D. Humane, learned APP for the State.

3. The prosecution case is that the victim was 15 years and 6 months of age on the date of the incident i.e. 07/01/2017. Her date of birth was 10/06/2001. She was examined as PW.2. Her mother was staying with the Applicant. The victim was also staying with them. According to her, her mother used to leave home for work at 10.00 a.m. and used to return back at 10.00 p.m. On 07/01/2017, PW.2 was alone in the house. At that time,

the Applicant committed rape on her. He threatened to kill her brother and mother. She deposed that the Applicant had been committing these acts since four years prior to this incident, when nobody used to be at home. P.W.2 informed this act to her cousin 'N', who in turn informed to her own mother. P.W.2 has further deposed that N's mother was her maternal aunt. She called the Child Line helpline and then had a conversation with them. After that, the FIR was lodged. The investigation was carried out. The Applicant was arrested on 12/05/2017.

4. Learned counsel for the Applicant submitted that out of the maximum sentence of 10 years, the Applicant is in custody for 7 years and 4 months. The Appeal is not likely to be decided during the balance period of less than 3 years of sentence, which is still remaining. He submitted that on merits, the Applicant has a very good case. There is unexplained delay in lodging the FIR. The incident took place on 07/01/2017 and the FIR was lodged on 27/03/2017. The deposition of the victim itself is unbelievable. The medical evidence is not very certain. There

are circumstances which show that the victim's mother's relatives were not happy with the Applicant and therefore he was falsely implicated.

5. Learned APP as well as learned counsel for the Respondent No.2 opposed these submissions. According to them, the delay in lodging the FIR was properly explained. The victim was of tender age. The Applicant had threatened to commit murder of her mother and therefore she could not tell anything to anybody. Only after gathering courage, she told this fact to her cousin and then Child Help Line persons. They further submitted that the medical evidence shows that there was overall finding consistent with old sexual intercourse. They further submitted that in the cross-examination, the P.W.1, the informant had denied that the Applicant was falsely implicated.

6. I have considered these submissions. The Applicant is in custody from 12/05/2017. Seven years and Four months have passed. The balance sentence is less. This has to be looked in the background of the facts of the case. There are some serious

doubts raised by the learned counsel for the Applicant in the deposition of the victim and in the deposition of the first informant. The victim has deposed that the Applicant had threatened to kill her mother. That threat was given on 07/01/2017. According to the P.W.2, that was not the only incident. He was committing that act for about 4 years. There is no corroborating circumstances showing that particular aspect. P.W.2 had not informed her mother or anybody else about such acts. As far as the incident of 07/01/2017 is concerned, it was reported quite belatedly. The FIR is dated 27/03/2017. According to P.W.2, she had told this incident to her cousin 'N' and thereafter it was told to her maternal aunt. So, in these circumstances, the witness 'N' was an important witness, who is not examined by the prosecution, for which an adverse inference can be drawn. However, that would be a matter which could be tested at the final hearing stage. The evidence of the first informant shows that in the cross-examination, she had admitted that they had tried many times to separate the Applicant and the victim's mother. Therefore, there is force in

the submission that the victim's mother's relatives were holding grudge against the Applicant and therefore, there was a strong possibility of false implication.

7. Considering that, all these serious points raised by the Applicant's counsel, can be tested at the final hearing stage, in the background of the fact that, the Applicant is in custody for 7 years and 4 months out of the total sentence of 10 years, I am inclined to grant bail to the present Applicant pending his Appeal.

8. Hence, the following order :

ORDER

- (i) During the pendency and final disposal of the Criminal Appeal No.471 of 2024, the Applicant is directed to be released on bail on his furnishing P.R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand only), with one or two sureties in the like amount.
- (ii) Interim Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)