

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

**INTERIM APPLICATION NO. 1425 OF 2024
WITH
INTERIM APPLICATION NO. 1426 OF 2024
IN
CRIMINAL APPEAL NO. 356 OF 2024**

1. Mohsin @ Mochi Rashid Shaikh
2. Sarfaraj @ Gani Wajir Ahmed Shaikh ..Applicants.
Versus
The State of Maharashtra & Anr. ..Respondents

Ms. Shabnam Shaikh a/w. Mushahid Khan for Applicants.
Mr. Prashant P. Jadhav, APP for State/Respondent.
Mr. Amit A. Mane (Appointed Advocate) for Respondent No.2.

**CORAM : SARANG V. KOTWAL, J.
DATE : 19 JUNE 2024**

PC :

1. Heard Ms. Shabnam Shaikh, learned counsel for the Applicants, Mr. Prashant Jadhav, learned APP for the State and Mr. Amit Mane, learned counsel for the Respondent No.2.

2. These applications are for suspension of sentence and for the applicants' release on bail during pendency of their Appeal. The Appeal is already admitted. The Applicants were the original

accused in POCSO Special Case No.389 of 2020 before the Special Judge, Dindoshi, Mumbai. The learned Judge vide the Judgment and order dated 13.03.2024 convicted the Applicant No.2 U/s.352 of the I.P.C. and sentenced him to suffer S.I. for three months. The learned Judge convicted both the applicants for commission of offence punishable U/s.354 r/w. 34 of the I.P.C. and sentenced them to suffer S.I. for one year and to pay a fine of Rs.1000/- each and in default to suffer S.I. for two months. Both of them were convicted U/s.10 of the Protection of Children from Sexual Offences Act (for short 'POCSO Act') and were sentenced to suffer S.I. for five years each and to pay a fine of Rs.2000/- each and in default to suffer S.I. for six months. The applicant No.2 was acquitted of commission of offence punishable U/s.8 of the POCSO Act.

3. Learned counsel for the applicants submitted that the allegations do not make out any case of sexual assault as defined U/s.7 of the POCSO Act. She submitted that the applicant No.2 was acquitted from the offence U/s.8 of the POCSO Act, then it was not permissible to convict either of them U/s.10 of the POCSO

Act. She submitted that the incident as alleged could not have occurred. The incident was improbable. The incident has allegedly taken place in densely populated area and no independent witness was examined. The conduct of the victim also raises doubt about the genuineness of the offence. The applicants are already in custody for more than one year and three months out of the sentence of five years. The Appeal is not likely to be heard within the balance period of the sentence. She, therefore, prayed for bail. She further submitted that there was previous enmity between the applicants and the victim's family and, therefore, they were falsely implicated. The applicants are young boys and they deserve to be released on bail.

4. Learned APP, as well as, learned counsel for the Respondent No.2 opposed these submissions by relying on the evidence of the victim.

5. I have considered these submissions. The victim's evidence shows that, 5 to 6 months prior to the incident, her father had intervened in the fight involving the present applicants and

since then there was enmity. The incident which is the subject matter of the case had allegedly occurred on 18.10.2020. There are allegations that the applicant No.1 put his hand on the victim's face and told her to accompany him. The other applicant instigated him to abduct her. After that, the victim told them that she would complain to her mother. After that she went home.

6. As submitted by the learned counsel for the applicants, the incident occurred in the area where other independent witnesses should have been available. The victim had not raised shouts. Her conduct will have to be examined at the final hearing stage. For the offence U/s.354 of the I.P.C. the applicants were sentenced for one year. They are already in custody for more than one year and three months. Considering all these aspects, since the Appeal is not likely to be decided within the balance period of the remaining sentence, the applicants can be released on bail pending their appeal.

7. Hence, the following order:

O R D E R

- i) During pendency and final disposal of Criminal Appeal No.356 of 2024, the Applicants are directed to be released on bail on their furnishing P. R. bonds in the sum of Rs.30000/- each with one or two sureties each in the like amount.
- ii) The Applicants shall not cause any harassment to the victim and her family, in any manner.
- iii) The Applications are disposed of.

(SARANG V. KOTWAL, J.)