

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

**INTERIM APPLICATION NO. 1805 OF 2024
IN
CRIMINAL APPEAL NO. 440 OF 2024**

Harsing Kalyansing Rathod	..Applicant.
Versus	
State of Maharashtra & Anr.	..Respondents

Mr. Shubham S. Upadhyay for Applicant.
Mr. Vithal B. Konde-Deshmukh, APP for State/Respondent.
Mr. Datta S. Solankar, (Appointed Advocate) for the Respondent No.2.

**CORAM : SARANG V. KOTWAL, J.
DATE : 13 JUNE 2024**

PC :

1. This is an application for bail pending Appeal. The applicant was the accused in POCSO Special Case No.363 of 2018. The learned Special Judge under POCSO Act, Mumbai, vide the Judgment and order dated 18.03.2024 convicted the applicant for commission of offences punishable U/s.354, 354-A of the I.P.C. and U/s.9(m) r/w. 10 of the Protection of Children from Sexual Offences Act (hereinafter referred to as 'POCSO Act'). The applicant was sentenced to suffer R.I. for five years and to pay a

fine of Rs.2000/- and in default of payment of fine to suffer S.I. for one month. He was acquitted from the charges of the offences punishable U/s.11 r/w. 12 of the POCSO Act.

2. The prosecution case is that the victim was around 10 years of age at the time of the incident dated 21.02.2018. The applicant was working in a stationery shop. The victim PW-1 went to his shop to buy paper. It is mentioned by her that the applicant pressed her chest for 4 to 5 times. When the other customers came to the shop, PW-1 returned home. The next day, she disclosed the incident to one friend; who in turn informed the victim's mother. Then they went to the police station and the F.I.R. was lodged. The investigation was carried out and the applicant faced the trial. He was ultimately convicted and sentenced; as mentioned earlier.

3. During trial, five prosecution witnesses were examined. The accused examined his brother as the defence witness.

4. Learned counsel for the applicant submitted that the prosecution story is false. The sentence imposed is five years. The applicant is in custody since his conviction on 18.03.2024. The

defence witness says that since the victim's family had not made payment of the goods purchased by them and the applicant refused to give any more goods on credit, this false case is lodged against him.

5. Learned APP and learned counsel for the Respondent No.2 opposed these submissions. According to them, the offence is serious. The victim was only 10 years of age and, therefore leniency may not be shown to the applicant.

6. I have considered these submissions. At this stage, there is evidence of DW-1 who is brother of the applicant. He has clearly deposed that the applicant refused to sale the goods to the victim's family on credit and that was the cause of dispute and false implication. The defence witness had maintained the diary showing outstanding amount against the victim's family. There is substance in the submission of the learned counsel for the applicant that the incident appears to be improbable. It was not a secluded place. It was an open shop and the customers were regularly visiting that shop. Considering all these aspects and since

the sentence imposed is of five years within which period the Appeal is not likely to be heard, the applicant deserves to be released on bail.

7. Hence, the following order:

O R D E R

- i) During pendency and final disposal of Criminal Appeal No.440 of 2024, the Applicant is directed to be released on bail on his furnishing P. R. bond in the sum of Rs.30000/- with one or two sureties in the like amount.
- ii) The Application is disposed of.

(SARANG V. KOTWAL, J.)