

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

**INTERIM APPLICATION NO.1861 OF 2024
IN
CRIMINAL APPEAL NO.454 OF 2024**

WITH

**INTERIM APPLICATION NO.1862 OF 2024
IN
CRIMINAL APPEAL NO.454 OF 2024**

Suraj Babnu Das

.... Applicant

versus

State of Maharashtra & Anr.

.... Respondents

.....

- Mr. Anand Pande, Advocate for Applicant.
- Smt. Manisha R. Tidke, APP for the State/Respondent.
- Mr. Subir U. Sarkar, appointed advocate for Respondent No.2.

**CORAM : SARANG V. KOTWAL, J.
DATE : 22nd JULY, 2024**

P.C. :

1. These are two applications for suspension of sentence and releasing the Applicant on bail during pendency of the Appeal No.454 of 2024. The Applicant has challenged the Judgment and Order dated 18/04/2024 passed by the Special

Judge under POCSO, on 18/04/2024, in POCSO Special Case No.316 of 2016. The Applicant was convicted for commission of offence punishable u/s 10 of the Protection of Children from Sexual Offences (POCSO) Act, 2012 and was sentenced to suffer rigorous imprisonment for 5 years and to pay a fine of Rs.3,000/- and in default of payment of fine to suffer further simple imprisonment of 15 days. He was also convicted for commission of offence punishable u/s 12 of POCSO and was sentenced to suffer rigorous imprisonment for 1 year and to pay a fine of Rs.1,000/- and in default of payment of fine to suffer simple imprisonment of 5 days.

2. Heard Mr. Anand Pande, learned counsel for the Applicant, Mr. Subir U. Sarkar, learned counsel for the Respondent No.2 and Smt. Manisha R. Tidke, learned APP for the State.

3. The prosecution case is that the Applicant was working as a house-help with 3 to 4 families. The incident took place in a

house of one of the families. The victims in this case are brothers, who were 8 and 7 years of age at that time. The allegations are that the elder brother was found disturbed in the school. Therefore, the school teacher took him in confidence and he was sent to a counsellor. It was his case that three months prior during Diwali time, the victim had visited his friend's house, where the Applicant was working. The Applicant had showed him obscene videos on an I-pad and thereafter had touched his private parts. Similar is the case of the other victim. On this basis, the FIR was lodged and the Applicant faced the trial.

4. Learned counsel for the Applicant submitted that the prosecution evidence is extremely doubtful. The victims had not complained about it to their parents immediately. Only after three months, since the teacher found the behaviour of one of the victims, was not normal and which required counselling, he was sent to a counsellor. Then this story was told by the victim. He submitted that the Samsung tablet which was recovered was

sent for FSL and no such obscene videos were recovered from memory of that tablet. He submitted that the Applicant had examined three defence witnesses in his support including himself. The other two defence witnesses were his employer and his wife. He submitted that there is a plausible explanation offered by the Applicant through the defence witness that the victims were troubling him by spraying liquid in his eyes and also troubling the dog, which was looked after him. Because of that quarrel, the Applicant was falsely implicated. The defence witnesses evidence show that both the tablets which the family owned, were password protected and therefore it was not possible for the Applicant to have shown any content from those tablets to the victims.

5. He further submitted that one of the victims had clearly stated that he knew the difference between the Samsung tablet and an I-pad. What was produced before the Court, was Samsung tablet, whereas the first victim has deposed about the I-pad. Learned counsel submitted that it is significant to note

that even the mother of the victims did not notice any behavioural change in the victim. This is also an additional factor in favour of the defence.

6. Learned APP as well as the counsel for the Respondent No.2 relied on the evidence of the victims to oppose these submissions. According to them, considering the tender age of the victim it was not likely that they would concoct a false story.
7. I have considered these submissions. I find substance in the submissions of the learned counsel for the Applicant. At this stage, doubt is created about the prosecution case. However, all these aspects will have to be decided at the final hearing stage after considering the entire evidence on record. However, the sentence imposed is 5 years. The Appeal is not likely to be decided within that period. The Applicant was on bail during trial. The incident is of the year 2015-16. More than 8 years have passed. In the meantime, there are no further allegations

against Applicant. In this view of the matter, I am inclined to grant bail to the Applicant during pendency of his Appeal.

8. Hence, the following order :

ORDER

- (i) During pendency and final disposal of the Criminal Appeal No.454 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. His sentence stands suspended till disposal of the Appeal.
- (ii) The Interim Applications are disposed of accordingly.

(SARANG V. KOTWAL, J.)