

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

**INTERIM APPLICATION NO.2068 OF 2024
IN
CRIMINAL APPEAL [STAMP] NO.10400 OF 2024**

Vishal Shashikant PataneApplicant
Versus
The State of Maharashtra
and another Respondents

Mr. Shreyas P. Barsawade, Advocate for the Applicant.
Mr. Vithal B. Konde-Deshmukh, APP for the Respondent-
State.

**CORAM : SARANG V. KOTWAL, J.
DATE : 25th JUNE, 2024**

P.C. :

1. This is an Application for bail pending Appeal. The Appeal is already admitted. The Applicant was convicted by the Special Judge, POCSO, Pune vide his judgment and order dated 17.1.2024 in Special POCSO Case No.626/2021. The Applicant was convicted under Section 376 of IPC and under Section 4 of the POCSO Act. He was sentenced to suffer RI for 20 years and to pay fine of Rs.25,000/- and in default to suffer SI for three months. He

was acquitted under Section 506 of IPC and under Sections 6 & 8 of POCSO Act.

2. Learned counsel for the Applicant submitted that there are discrepancies in the depositions of the victim, her mother and the neighbour who are important witnesses. The Medical Officer has not opined that the incident of forceful sexual offence was committed on that particular day. Therefore, the Applicant deserves to be released on bail. He is in custody for about three years. Therefore, he be granted bail.

3. I have considered these submissions in the light of the evidence annexed to this Appeal. The main evidence is of the victim herself who is examined as PW-2. She has stated that her date of birth was 10.9.2005. The birth certificate is produced on record which corroborates her deposition that her date of birth was 10.9.2005. The birth certificate is produced on record at Exhibit-32. The incident took place on 27.6.2021. It is her case that at about 2.00 a.m. in that night the Applicant called her to the terrace. He

had threatened her that he would show her photographs to others. Therefore, because of the threat, the victim went to the terrace. It is her case that the Applicant committed forceful penetrative sexual assault on the victim. The victim was trying to go back to her house. In the meantime, her mother and neighbour Surekha came on the terrace. They removed the quilt. The mother took her home and made inquiries with the victim. She narrated the incident. Thereafter, this FIR is lodged.

In the cross-examination, she had deposed that her parents were suspicious that she and the Applicant were having love affair. The Applicant had her photographs in his possession. From her evidence it is clear that at the time of incident she was about 15 years & 9 months of age. Her evidence is corroborated by her mother's evidence who is examined as PW-1. She has stated that around 2 O'clock in the night on 26th to 27th June, 2021, she saw that the victim was not in the house. She took search for her. She went to terrace of the building of the Applicant because she was suspicious of the Applicant. She went to the terrace with her

neighbour Surekha. She saw that the victim was sleeping with the Applicant. She got angry and she beat the Applicant. Her daughter told her story. Thereafter, the FIR is lodged.

4. PW-4 Surekha was a neighbour. She has not stated that she had accompanied PW-1 on the terrace but she had stated that at 2 O'Clock in the night the victim's mother had approached her and had searched for the Applicant. At that time, this witness had told PW-1 that the Applicant could be on the terrace. Thereafter she saw that the mother was beating the victim. Besides that, she has not stated anything.

5. The evidence of the doctor shows that the victim had given history of six to seven such episodes but it was mentioned as a consensual relationship. On her examination and her history given to the doctor, the medical officer Dr. Ramugade who was examined as PW-6, in paragraph-3 stated that he found multiple old healed hymenal tears. There was no fresh injury.

In the cross-examination, he admitted that it was not possible to opine firmly about the vaginal penetrative sexual intercourse on 27.6.2021.

6. Thus, from this evidence there appears to be some consensual relationship between the victim and the Applicant. However, she was below 16 years of age. The victim was found with the Applicant on the terrace in the same bed. The consent in this case would not matter as the victim was below 18 years of age. In fact on the date of incident, she was 15 years & 9 months of age. Therefore, though learned counsel for the Applicant has tried to take assistance from the medical evidence that there was no firm opinion about the episode on 27.6.2021, the evidence of the victim and the mother is sufficient at this stage against the Applicant as is held by the learned Judge.

7. Therefore, no case for bail pending Appeal is made out. The Application is dismissed.

(SARANG V. KOTWAL, J.)

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