

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

**INTERIM APPLICATION NO.2092 OF 2024
IN
CRIMINAL APPEAL NO.758 OF 2024**

Sjjad Shafi Mohammad KhatikApplicant
Versus
The State of Maharashtra
and another Respondents

Mr. Sanjay R. Singh, Advocate for the Applicant.
Smt. M.R. Tidke, APP for the Respondent No.1-State.
Mr. Pravin H. Padave, Advocate (appointed) for the
Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 18th SEPTEMBER, 2024

P.C. :

1. The Applicant has preferred this application seeking bail during pendency of his Appeal.
2. The Applicant was the accused in POCSO Special Case No.311/2019 before the Special Judge for POCSO, Greater Mumbai. The learned Judge, vide her judgment and order dated 24.11.2023, convicted the Applicant for

commission of the offence punishable under Section 10 of the Protection of Children From Sexual Offences Act, 2012 (for short, 'POCSO Act') and under Section 506 of IPC. He was sentenced to suffer RI for five years and to pay fine of Rs.5,000/- and in default of payment of fine to suffer S.I. for two months.

3. Heard Mr. Sanjay Singh, learned counsel for the Applicant, Smt. M.R. Tidke, learned APP for the Respondent No.1-State and Mr. Pravin Padave, learned appointed counsel for the Respondent No.2.

4. The prosecution case is that the victim was 11 years & 5 months old at the time of the incident. The Applicant was the step-father of the victim. He was the second husband of the victim's mother. It is alleged that when the victim used to sleep, the Applicant used to touch her indecently and he used to touch her chest and private parts. It is her case that when she resisted, he used to threaten her that he would kill her and her mother both. On one occasion, the victim told this incident to her mother, who lodged her FIR on

23.2.2019. After that the investigation was carried out and the Applicant was arrested.

5. Learned counsel for the Applicant submitted that the Applicant was on bail during trial. The sentence imposed on him is five years, out of which he is in custody for about eleven months. The Appeal is not likely to be decided within a short period. He submitted that the victim's deposition does not inspire confidence. They were all staying in one house. When everybody was sleeping, the Applicant has allegedly committed this act. Thus, it was not possible for her mother not to have noticed the incident or heard the shouts of the victims.

6. Learned counsel for the Applicant submitted that the allegations are result of the matrimonial dispute between the victim's mother and the Applicant. The cross-examination of the victim's mother shows that after the FIR was lodged there were matrimonial proceedings. He submitted that the Applicant is falsely implicated. He was on bail during trial and he has not misused that liberty.

7. Learned counsel for the Respondent No.2 as well as learned APP submitted that there is no delay in lodging the FIR. Since the mother came to know about the incident on 23.2.2019, immediately the offence was registered.

8. I have considered these submissions. Serious issues raised by learned counsel for both the sides will have to be decided at the final hearing stage. However, the sentence imposed on the Applicant is five years. Out of which he is in custody for almost one year. The Appeal is not likely to be decided within a short period. The Applicant was on bail during trial and there are no allegations that he has misused that liberty. As submitted by learned counsel for the Applicant, there is matrimonial dispute between the victim's mother and the Applicant. The impact of that dispute will have to be decided at the final hearing stage. Considering all these aspects, the Applicant can be granted bail pending his Appeal.

9. Hence, the following order :

ORDER

- (i) During the pendency and final disposal of Criminal Appeal No.758/2024, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) The Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)

Deshmane (PS)