

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

**INTERIM APPLICATION NO. 2522 OF 2024
IN
CRIMINAL APPEAL NO. 667 OF 2024**

Bilal Ali Hussain Shaikh ...Applicant
Versus
The State Of Maharashtra And Anr. ...Respondents

Mr. S.G. Rajput a/w. Mr. Ashish Rajput & Mr. Sagar Gawade for Applicant.
Mr. V. A. Kulkarni, APP for Respondent No.1/State.
None for Respondent No.2.

CORAM : M. M. SATHAYE, J.

DATED : 29 NOVEMBER 2024

P.C.:

1. Heard learned Counsel for the Applicant/Convict and learned APP for the Respondent-State.
2. This is an Application for suspension of sentence and interim bail, pending Criminal Appeal, which is already admitted and pending for final hearing.
3. By the impugned judgment and order dated 22/05/2024 passed in POCSO Special Case No. 706 of 2021, the Applicant is convicted u/s. 4, 6, 8 & 12 of the Protection of Children from Sexual Offences Act, 2012 and is sentenced to undergo rigorous imprisonment of 20 years.

4. The case of the prosecution is as under.

The informant is mother of the victim, who was 9 years old at the time of incident dated 26/04/2021. On the date of incident, the victim was eating ice cream outside the house, where other children were playing. The children started shouting “Bilal aaya Bilal aaya, Bhago”. However, the victim could not understand it and did not run away. The Accused came near the victim and asked him that he has a small work. At the instance of the Accused and on enticement of paying Rs.20/- the victim accompanied the Accused, who took the victim in dilapidated building, where the Accused asked the victim to stand with his back towards the Accused. Accused then opened the chain of his trouser and also removed the pant of the victim and inserted his private part in the anus of the victim. Therefore, the victim felt pain and started crying. Due to the victim’s crying, nearby persons gathered and the Accused let the victim go. Thereafter, the victim came home and narrated the incident to his mother. The victim then took his mother and pointed at the Accused, who confronted the Accused about his act. The Accused then threatened the mother with dire consequences.

5. Learned Counsel for the Applicant submitted that he has already undergone 3 years and 7 months of detention. He submits that the incident happened between the 5 to 5.30 PM and it was immediately reported at 6.15 pm and thereafter immediately the Accused was arrested. Clothes were taken and examination was conducted. However, no semen or blood was found. He submitted that only victim is the eye-witness. He submitted that prosecution story contends that boys were playing when the Accused took

the victim, but no other eye-witnesses are examined. He submitted that doctor's evidence (P.W. No. 6) is not corroborative. He submitted that the victim (P.W. No. 2) has stated that he was taken to the place where there was a cot but no such cot was not found as per spot panch P.W.3. He submitted that P.W. No. 2 – victim has improved his case by stating in the cross-examination that after the incident people had gathered and he heard voices of many persons and the Accused had received phone call on his mobile. He has further improved his case by saying that one person had come to the first floor after listening the voice of the Accused-Bilal, from whom the Accused asked for a wooden stick, upon which the said person pulled a branch tree and gave that stick to the accused. He submitted that victim being child of 9 to 10 years, there is a possibility of tutoring. Finally, he submitted that Accused is young person of about 25 years and the Court may adopt lenient approach.

6. Learned APP for the Respondent No. 1-State on the other hand opposed the grant of interim bail. He submitted the assault has been narrated by the victim himself. He submitted that the victim was of tender age of 9 years and the offence is of heinous nature. He submitted that even the slightest penetrative sexual assault is sufficient to hold the Applicant guilty. He submits that the Doctor (P.W. No. 6) has not rejected or recalled the preliminary opinion. He submitted that it is a settled position of law that sole testimony of the victim is sufficient for conviction. He submitted that this is not a fit case for showing any indulgence.

7. I have considered the submissions and perused the records.

8. Perusal of the impugned order shows that the birth date of the victim

is proved by the birth certificate to be 15/10/2011. Incident happened on 26/04/2021. Therefore, apparently the victim was not even 10 years old when the incident happened. The victim has deposed that at the time of incident, he felt pain and started crying because the Accused inserted his private part from the victim's backside in the anus. He has deposed that the accused showed a stick to him and threatened him that if the incident is reported the Accused will not leave the victim. It is further deposed that the Accused also threatened the victim with dire consequences to his family, if the incident is reported to the police. It has come on record that victim has identified the Accused.

9. The arguments about existence of the cot at the place of the incident and alleged improvement made by the victim, can be considered at the time of hearing of the Appeal. At this stage, both the arguments are not fatal to existence of the alleged act. Presently, there is sufficient material on record in the form of victim's deposition of feeling of pain due to the act of the Accused and the Accused threatening the victim with stick and further threatening of dire consequences to him and his family. In the deposition of the P.W. No. 6 (Doctor), he has stated *"I have given provisional opinion that after examination of patient, there is nothing to suggest that there is no any signs of sexual intercourse"*. He has further deposed that when he examined the Accused on the day of incident, it was found that the accused is in habit of occasional consumption of marijuana.

10. In the aforesaid facts and circumstances and considering the gravity of the offence involved as also considering that this is the case of aggravated penetrative sexual assault as provided u/s. 5(m) of the POCSO Act (since the victim was below 12 years of age) as also considering the societal impact

of the offences like these, I am of the opinion that this is not the fit case to show any indulgence. Therefore, I am not inclined to grant interim bail.

11. The Application is accordingly rejected.

(M. M. SATHAYE, J.)