

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

**INTERIM APPLICATION NO.2526 OF 2024
IN
CRIMINAL APPEAL NO.668 OF 2024**

Anil Baburao KapseApplicant
Versus
State of Maharashtra & Anr.Respondents

Mr. Narayan G. Rokade, Advocate for the Applicant.
Mr. S.H. Yadav, APP for the Respondent No.1-State.
Mr.Somnath Iyer,Advocate(appointed) for the Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 27th AUGUST, 2024

PC. :

1. This is an Application for bail pending Appeal.
2. The Applicant was the accused before the Special Judge, Niphad, District-Nashik in Sessions Case No.122/2019. The learned Judge, vide his judgment and order dated 6.6.2024, convicted the Applicant for commission of the offence punishable under section 8 of the Protection of Children From Sexual Offences Act, 2012 (for short, 'POCSO Act'). He was sentenced to suffer RI for three years and to pay fine of

Rs.10,000/- and in default of payment of fine to suffer SI for one month. No separate sentence was imposed for the offence punishable under Section 354-A of IPC. The compensation amount of Rs.10,000/- was directed to be paid to the victim.

3. Heard Mr. Narayan Rokade, learned counsel for the Applicant, Mr. S.H. Yadav, learned APP for the Respondent No.1- State and Mr. Somnath Iyer, appointed counsel for the Respondent No.2.

4. The victim was examined as PW-1 in this case. According to her, her date of birth is 7.1.2005. The incident took place on 29.4.2018. At about 9.30 p.m., the victim's family went to sleep. They were sleeping in the open space in front of their house. At about 11:45 p.m., the victim realized that somebody was pressing her mouth and was pulling her. She woke up and started shouting. Her family members also woke up. The Applicant ran away. On this basis, the FIR is lodged and the Applicant faced the trial.

5. Learned counsel for the Applicant submitted that the incident is not true. It was not possible that the incident could have taken place in the presence of the family members. It is impossible to believe that when all the family members were sleeping together, the Applicant would come there and outrage the modesty of the victim.

6. Learned counsel further submitted that the sentence imposed on the Applicant is only for three years and the Appeal is not likely to be decided during that period. The Applicant was on bail during trial and he has not misused that liberty. He further submitted that even after his conviction, the Applicant was granted bail under Section 389 of Cr.P.C. for a temporary period.

7. Learned counsel for the Respondent No.2 and learned APP for the State opposed these submissions. According to them, there is no reason to disbelieve the evidence of the victim.

8. I have considered these submissions. The points raised by the learned counsel for the Applicant will have to be

decided at the final hearing stage. The sentence imposed on the Applicant is only for three years and the Appeal is not likely to be decided during that period. The Applicant was on bail during trial and he has not misused that liberty. Therefore, I am inclined to grant bail to the Applicant during pendency of his Appeal.

9. Hence, the following order:

ORDER

- (i) During pendency and final disposal of the Criminal Appeal No.668/2024, the Applicant is directed to be released on bail on his executing a PR. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.
- (ii) The Applicant shall not harass the victim or her family members in any manner.
- (iii) Interim Application is disposed of accordingly.

Digitally signed
by
PRADIPKUMAR
PRAKASHRAO
DESHMANE
Date:
2024.08.29
15:50:07 +0530

(SARANG V. KOTWAL, J.)