

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

**INTERIM APPLICATION NO.2573 OF 2024
IN
CRIMINAL APPEAL NO.680 OF 2024**

Uttam Dagdu Karande Applicant
versus
State of Maharashtra & Anr. Respondents
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- Mr. Anil Jaising Jadhav, Advocate for Applicant.
- Mr. Swapnil V. Walve, APP for the State/Respondent.
- Mr. Rahul Shinde, appointed advocate for Respondent No.2.

**CORAM : SARANG V. KOTWAL, J.
DATE : 05th SEPTEMBER, 2024**

P.C. :

1. The Applicant was the accused in POCSO Special case No.1335 of 2021, before the learned Special Judge, Greater Mumbai. The learned Judge vide the Judgment and Order dated 08/05/2024, convicted the Applicant for commission of offence punishable u/s 354 of the Indian Penal Code and u/s 10 of the Protection of Children from Sexual Offences Act, 2012. He was sentenced to suffer rigorous imprisonment for 5 years and to pay a fine of Rs.10,000/- and in default of payment of fine to suffer simple imprisonment for 2 months.

2. Heard Mr. Anil Jadhav, learned counsel for the Applicant, Mr. Rahul Shinde, learned counsel for the Respondent No.2 and Mr. Swapnil V. Walve, learned APP for the State.
3. The prosecution case is that the victim's date of birth was 11/10/2017. The alleged incident occurred on 06/09/2021. Thus, she was below 4 years of age. The victim complained to her mother that she was having burning sensation in her private part. Initially her mother ignored. But when the victim complained about the pain, the mother enquired with her. At that time, the victim told her that the Applicant who was grandfather of her friend, had touched her private parts. The mother lodged the FIR. The investigation was carried out. The Applicant was arrested. Ultimately, he was convicted as mentioned above.
4. Learned counsel for the Applicant submitted that the Applicant is a 70 year old man. He is falsely implicated because of the dispute between the neighbours. He relied on the evidence of D.W.1, who is the Applicant's daughter. She has narrated about the petty quarrels between the neighbours on account of quarrel

between small children i.e. the victim and her friend i.e. the Applicant's grandson. He submitted that the D.W.1 had lodged NC against the victim's family. Apart from these submissions, the learned counsel invited my attention to the fact that the trial was not conducted by an experienced lawyer because the victim, who was examined as P.W.3, was not cross-examined at all. He submitted that his efforts to recall the victim for cross-examination were not successful and therefore the Applicant was deprived of his right to cross-examine. He further submitted that the mother of the victim had refused permission to the Medical Officer to carry out the medical examination and therefore adverse inference be drawn.

5. Learned APP as well as learned counsel for the Respondent No.2 opposed these submissions. They invited my attention to the evidence of P.W.4, who was a neighbour and who had supported the prosecution case.

6. I have considered these submissions. As far as P.W.4 is concerned, her statement was not recorded during the

investigation. Therefore, her evidence will have to be scrutinized carefully. The other points raised by the learned counsel for the Applicant require serious consideration at the final hearing stage. The Applicant was on bail during trial. He has not misused that liberty. He is a 70 year old man. He has already suffered imprisonment for about 8 months during the investigation and after his conviction. The Appeal is not likely to be decided within a reasonably short period. In this view of the matter, the Applicant can be granted bail pending his Appeal.

7. Hence, the following order :

ORDER

- (i) During the pendency and final disposal of the Criminal Appeal No.680 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.
- (ii) Interim Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)