

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

**INTERIM APPLICATION NO. 2959 OF 2024
IN
CRIMINAL APPEAL NO. 450 OF 2023**

Vishnu Rama Shelke

.... Applicant

Versus

The State of Maharashtra and Anr.

.... Respondents

Mr. Aniket Nikam i/b Mr. Amit Icham, for the Applicant.
Mr. Prashant P. Jadhav, APP, for Respondent No.1 – State.
Mr. Yogesh Birajdar, for Respondent No.2.

CORAM : SHIVKUMAR DIGE, J.

DATE : 23rd OCTOBER, 2024.

P.C. :

1. By this application, Applicant is seeking suspension of sentence and grant of bail in Special Case (POCSO) No. 273 of 2020. The Applicant has been convicted under Section 354 of Indian Penal Code, 1860 (for short “IPC”) and Sections 7, 8, 9(m) and 10 of Protection of Children from Sexual Offences Act, 2012 (for short

“POCSO”) and sentenced to suffer Rigorous Imprisonment for a period of five years and pay to fine of Rs.5,000/-.

2. It is prosecution’s case that on 30th March, 2018, when victim was playing in the courtyard, Applicant hold her hand and dragged her in one room and tried to touch her clothes. At that time Victim raised voice, due to shout of victim 2-3 people gathered there and then victim ran away from that room.

3. It is contention of learned counsel for the Applicant that there are discrepancies in the statement of victim under Section 164 of Criminal Procedure Code, 1973 (for short “Cr.P.C.) and deposition given before the Court.

Learned counsel further submits that the Applicant’s statement under Section 164 of Cr.P.C. has not stated that Applicant touched her clothes. She has stated that Applicant dragged her and taken her in one room and thereafter, he trying to lift her and was not allowing to go out whereas, in the deposition before the Special Court, the victim has stated that while returning back from her friend’s house, Applicant told her to join with him but victim refused. When victim refused, Applicant caught hold her hand and took her in close room and in that close room, he tried to touch her

clothes.

Learned counsel further submitted that the neighbours who have been examined are related to the first informant. Applicant is behind bar for more than one year and six months, out of five years conviction. Applicant is Karta of his family. During the trial he was on bail. He has not misused his liberty. It may take time to dispose of the appeal.

Learned counsel further submitted that earlier bail application of the Applicant was rejected by this Court and it was challenged by the Applicant before the Hon'ble Apex Court and the Hon'ble Apex Court has granted liberty to the Applicant to file bail application after reasonable time. Hence, this application has been filed and requested to allow the bail application.

3. It is contention of learned APP along with learned counsel for Respondent No.2 that at the time of incident, victim was seven (7) years old. Applicant caught hold her hand and dragged her in one room and he was trying to touch her clothes. At the time of incident, the Applicant was 57 years old. The prosecution has proved case before the learned Special Court beyond reasonable doubt. Accordingly, Applicant has been convicted hence requested to reject

the Application.

4. I have heard all learned counsel. Perused impugned judgment and order and evidence produced on record.

5. The prosecution's case revolves around the statement of victim in deposition before the Court. The victim has stated that Applicant had touched her clothes whereas in statement under Section 164 of Cr.P.C, she has not stated that Applicant touched her clothes. During the trial, Applicant was on bail, he has not misused his liberty. Out of five years conviction, Applicant is behind bar for more than one year and six months. Applicant is Karta of his family. It may take time to dispose of the appeal. Considering these facts, I am inclined to allow this application.

6. In view of above, the Applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of the appeal, on the following terms and conditions.

ORDER

i. The Applicant be enlarged on bail on furnishing P.R.

Bond in the sum of Rs.25,000/- with one or two sureties
in the like amount.

ii. Applicant shall not contact victim or her family

members.

7. The interim application is allowed in the aforesaid terms and is accordingly disposed of.

8. All concerned to act on the authenticated copy of this order.

(SHIVKUMAR DIGE, J.)