

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

**INTERIM APPLICATION NO.3261 OF 2024
IN
CRIMINAL APPEAL NO.881 OF 2024**

Nitesh Suryakant Dhamanase Applicant
versus
State of Maharashtra & Anr. Respondents

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- Mr. Vivek N. Arote, Advocate for Applicant.
- Smt. Sangita D. Shinde, APP for the State/Respondent.
- Ms. Nasreen Ayubi, appointed advocate for Respondent No.2.

**CORAM : SARANG V. KOTWAL, J.
DATE : 30th SEPTEMBER, 2024**

P.C. :

1. The Applicant is seeking bail pending his Appeal. He was the accused before the Special Judge, Mangaon, Dist- Raigad, in Special POCSO Case No.16/2021. The learned Judge vide his Judgment and Order dated 09/07/2024, convicted the Applicant for commission of offence punishable u/s 7 r/w 8 and 9(m) r/w 10 of the Protection of Children from Sexual Offences Act, 2012. He was sentenced to suffer rigorous imprisonment for five years besides imposition of fine.

2. Heard Mr. Vivek N. Arote, learned counsel for the Applicant, Ms. Nasreen Ayubi, learned counsel for the Respondent No.2 and Smt. Sangita D. Shinde, learned APP for the State.
3. Learned counsel for the Applicant submitted that the victim's cross-examination itself shows that there was enmity between the Applicant and the victim's family. Therefore, he is falsely implicated. The incident is improbable. No independent witness is examined. The Applicant was on bail during the trial. The sentence imposed on the Applicant is short. The Appeal is not likely to be decided during that time. The Applicant has no criminal antecedents. He is a young man and was 23 years of age at the time of incident.
4. Learned APP as well as learned counsel for the Respondent No.2 submitted that there is evidence of victim and her cousin who was an eyewitness. Their evidence is clear and therefore, the conviction is rightly recorded.

5. I have considered these submissions. The prosecution case is that the date of birth of the victim was 12/10/2009. The incident had allegedly taken place on 08/01/2021 at about 02.00 p.m. The victim was playing with the friends. That time, the Applicant came from behind and held her tightly. Though, her friends were telling him to leave her, he held her for some time and then left her. The victim told her mother about the incident after two days and then this FIR was lodged.
6. The cross-examination of the victim mentions that there was quarrel between both the families about two months prior to the incident. Therefore, there is some substance in the submissions of learned counsel for the Applicant. However, that will have to be decided at the final hearing stage. The sentence imposed is short. The Appeal is not likely to be decided in a reasonably near future. The Applicant is a young boy.
7. Considering all these aspects, the Applicant can be granted bail during pendency of his Appeal on certain conditions.

8. Hence, the following order :

ORDER

- (i) During pendency and final disposal of the Criminal Appeal No.881 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) The Applicant shall not cause any harassment to the victim or her family.
- (iii) Interim Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)