

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

**CRI-INTERIM APPLICATION NO. 3848 OF 2024
IN
CR. APPEAL NO. 1048 OF 2024**

Gowardhan Ganpat Temkar ...Applicant
Versus
State Of Maharashtra And Anr ...Respondents

Mr. Ankit R. Takle i/b. Mr. Aashish Shah for the Applicant.
Mr. V. A. Kulkarni, APP for the Respondent No. 1-State
Mr. Amol B. Patil for the Respondent No. 2
Mr. Sonkamble, PSI, Mahim Police Station present.

CORAM : M. M. SATHAYE, J.

DATED : 13th DECEMBER 2024

P.C.:

1. Learned Counsel for the parties were heard on 05/12/2024 and the matter is placed today for passing order.
2. This is an Application for suspension of sentence and interim bail. By the impugned judgment and order dated 03/09/2024 passed by the Designated Judge for Gr. Bombay in POCSO Special Case No. 36 of 2018, the Applicant / Sole Accused is convicted u/s. 9(m) & 10 of Protection of Children From Sexual Offences Act, 2012 (for short "POCSO" Act) and u/s. 354 of the Indian Penal Code, 1860 (for short "the IPC"). The Applicant is sentenced to suffer 5 years of imprisonment.
3. The Appeal is admitted on 01/10/2024 and same is pending for final

hearing.

4. The case of the prosecution is as under. That the Accused was neighbour of the minor victim girl aged 9 years. On the day of the incident, the victim was playing and her parents had gone for work, when the Accused called her and took her to mezzanine floor. The Accused removed his half pant and underwear and also removed victim's nicker. That the Accused then showed offensive videos to the victim from his mobile handset and thereafter touched her private parts. When the mother of the victim returned, the victim went to the mother and started crying. That on inquiry, Accused apologized and therefore the incident was not reported. However, when the Accused started quarrelling and abusing, the incident was reported.

5. Learned Counsel for the Applicant submitted as under. That Applicant was on bail throughout and he has not misused the liberty. That as on today, the Applicant has suffered about 4 ½ months detention. That there was enmity between the parties and there is delay of 21 days in reporting the incident. That the Applicant has been falsely implicated. That alleged pornographic material was not found on the Applicant's mobile phone. That the victim has referred him as uncle in the cross-examination admitting that she used to go to the house of the accused to play with the children of the Accused. That the mother of the Accused (PW. No. 2-Informant) has admitted that she does not have good relations with the mother of the Accused and they have had many quarrels with each other. That the Investigating Officer, PW. No. 5 has admitted that the Applicant's mobile was not checked and the Investigating Officer cannot tell whether there were any incriminating material on the Applicant's mobile phone. It is submitted that

in these circumstances, the Applicant deserves bail.

6. Learned APP duly assisted by learned Counsel for the Respondent No. 2-Informant (mother of the victim) opposed the bail. They submitted as under. That the victim herself has stated before the Court that the Accused took her to the upper floor (mezzanine) and closed the shutter of the windows and thereafter removed clothes of the victim. The victim has herself stated that the Accused had shown dirty videos to her on mobile phone and has touched her private part and caressed her person. That this evidence of victim is sufficient to suggest that the Applicant has indulged in disrobing the victim. That delay in filing FIR cannot be fatal and it has to be considered in the social set up we live in. That the alleged theory of quarrel between the family is quarrel between the 'mother of the Accused' and complaint and not with the accused himself. On these grounds bail is opposed.

7. I have considered the submissions and perused record.

8. This is a case of short sentence of 5 years. The Applicant is not convicted under section 9(u) of POCSO Act to consider the case of disrobing at this stage. This is not a case of penetrative sexual assault or its aggravated form. As can be seen from the evidence of the investigating officer PW-5 no pornographic material was found on the Applicant's phone. In fact PW-5 has admitted that he has not checked the Applicant's mobile handset. The mother of the victim i.e. the Complainant has admitted that the relationship between the parties were not good and there were many quarrels between them.

9. Considering the date of the alleged incident (29/10/2017) and date of

FIR (19/11/2017), there is a considerable delay in filing case. No antecedents are brought to the notice of this Court, so also no other exceptional circumstances are shown. Nothing is also brought on record to indicate that the Applicant had misused the liberty when he was on bail during Trial. The Appeal is admitted recently and not likely to be taken up for final disposal in short time.

10. In the aforesaid peculiar facts and circumstances, I am inclined to grant bail. Hence, the following order:

- (a) The remaining sentence of the Applicant – Gowardhan Ganpat Temkar convicted under the judgment and order 03/09/2024 passed by the Designated Judge for Gr. Bombay in POCSO Special Case No. 36 of 2018 is suspended.
- (b) The Applicant be released on bail on furnishing P.R. Bond of Rs.25,000/- with one surety in the like amount.
- (c) The Applicant is directed not to contact or approach or meet the victim or her family members directly or indirectly. The Applicant is also directed to report to the concerned Police Station on 1st Monday in every two months till the disposal of the Appeal.

(M. M. SATHAYE, J.)