

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

**INTERIM APPLICATION NO. 4734 OF 2024
IN
CRIMINAL APPEAL 139 OF 2023**

Digambar Ganpat PotphodeApplicant
V/S
The State Of Maharashtra And AnrRespondents

Mr R V Gupta a/w Mr Rohit Vaishya for Applicant
Mr. V. A. Kulkarni, APP for the Respondent-State.
Mr. Madhusudan Parekh for the Respondent No. 2.

CORAM : M. M. SATHAYE, J.

DATED : 19th NOVEMBER 2024

P.C.:

1. Heard learned Counsel for the Applicant/Convict, learned APP for the Respondent No. 1-State and learned counsel for the Respondent No. 2/Victim.
2. This is a second Application of the Applicant, seeking temporary bail for 15 days and for suspension of sentence for that time, on the ground that wedding/marriage of the Applicant's son is fixed on 23/11/2024.
3. Admittedly the first Application of the Applicant, seeking suspension of sentence and release on interim bail is rejected by a reasoned order dated 27/02/2024. The Applicant is convicted for the offences punishable u/s 376(2), 376(3) and 506 of Indian Penal Code and u/s. 4, 6 & 8 of the Protection of Children from Sexual offences Act, 2012 and he is awarded

sentence of 20 years of rigorous imprisonment.

4. Learned APP for the Respondent -State has opposed this prayer on the ground that marriage/wedding in the family is not akin to a medical or other emergency or last rites for death in the family so as to justify indulgence. He has produced a report received from the Kolad Police Station dated 19/11/2024. It appears that C.R. No. 39/2000 against the Applicant was closed under Summary No. 259/30/05 (in connection with offences punishable under sections 452, 141, 147, 149, 353, 332, 427, 186 & 160 of Indian Penal Code) and the Applicant was acquitted in R. C. No. 86 of 2013 (from offences punishable under sections 323, 504, 506 & 34 of Indian Penal Code) because the complainant remained absent and did not lead evidence.

5. Learned Counsel for the Respondent No. 2- Victim submits that the crime committed by the Applicant, for which he is already convicted on appreciation of the evidence, is heinous in nature. He submits that the victim was 15 years old when the crime was committed. He further submitted that it was a repetitive act and the Applicant was in position of authority when the act was committed, since the victim was employed by the Applicant to work as maid in the hotel run by the Applicant.

6. I have perused the record. There is medical evidence in the form of deposition of P.W. No. 5- a lady Doctor, who has opined that possibility of sexual assault cannot be ruled out. She has proved that on medical examination, PV bleeding was found on inner aspect of thighs and even radiological examination of the victim has revealed the age of the victim as 14 to 16 years, thereby clearly indicating that the victim was minor at the time of offence. The act was repeated and done being in the position of

authority (as employer).

7. Learned Counsel for the Applicant, on a specific query by the Court, submitted that the Applicant is not in a position to afford police escort. Learned APP pointed out that it can be seen from the annexures to the Application that a destination wedding is planned and obviously the Applicant and his family is not coming clean before the Court.

8. Considering the facts and circumstances narrated above and the gravity of the offence, as also the order by which the first bail Application was rejected, in my view, this is not a fit case where the State should be directed to spend from the public exchequer, for escorting the Applicant. Also in the facts and circumstances of this case, it is not a fit case to grant temporary bail without police escort or police personnel accompanying the Applicant.

9. So far as the orders relied upon by the learned Counsel for the Applicant in support of his case i.e. order dated 07.06.2023 passed in Crim I. A. No. 1966 of 2023 by this Court and S.B. Crim. Misc. Second (Interim) Application No. 794 of 2023, are concerned, it is trite law that in such cases, discretion has to be exercised by the Court in the facts and circumstance of each case. Therefore, the said orders do not advance the case of the Applicant.

10. **At this stage**, learned Counsel for the Applicant submitted on instructions from Applicant's wife, that the Applicant's family would raise money for bearing the escort charges and appropriate order may be passed.

11. It is therefore obvious that the Applicant was taking a chance earlier.

12. Learned APP on instructions from the concerned police station, informed that considering that wedding/marriage functions are scheduled on 22nd and 23rd November 2024 and counting of votes of the assembly elections in the State, is scheduled on 23.11.2024, it will be very difficult to provide escort to the Applicant, even if an order to that effect is under consideration.

13. I have already held that in the facts of this case, in my opinion, this is not a fit case where the Applicant can be granted temporary bail without police escort.

14. The Application is accordingly rejected.

(M. M. SATHAYE, J.)