

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.3051 OF 2024

IN

CRIMINAL APPEAL NO.824 OF 2024

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Ajay Gangabaksh Singh

...Applicant

Versus

The State of Maharashtra and Anr.

...Respondents

Appearance on 19/12/2024 :

Mr. Ramanik P. Pawar a/w. Samiksha Pawar, Trupti Jambulkar, Dhanshree Jagdale, Samathan Makmulkar, Shivtej Takalkar, for the Applicant.

Mr. Vinit Kulkarni, App for the Respondent No. 1/State.

Ms. Siya Chaudhry, for Respondent No. 2 (appointed through High Court Legal Services Committee).

Mr. Sunil Wagh, PSI, Sanpada Police Station, Navi Mumbai, present.

Appearance on 06/01/2025 :

None for the Applicant.

Mr. Shrikant Yadav, APP for the Respondent No. 1/State.

Ms. Siya Chaudhry, for Respondent No. 2 (appointed through High Court Legal Services Committee).

Mr. Sumeet Kendre, P.S.I., Sanpada Police Station, Navi Mumbai, present.

CORAM : M.M. SATHAYE, J.

**DATE : 6th JANUARY, 2025
(IN CHAMBER)**

P.C. :

1. Learned counsel for the Applicant and learned APP for Respondent Nos.1/State duly assisted by learned counsel for Respondent No.2/Victim were heard on 19.12.2024 and the application is kept today for passing order.

2. This is an application u/s. 389 of the Criminal Procedure Code, 1973 ('CrPC' for short) for suspension of sentence and interim bail during the pendency of the appeal by sole Accused. By the impugned Judgment and Order dated 28.06.2024 in Special Case No. 279 of 2023 (old Thane Special Case No. 16/2018) passed by Additional Sessions Judge, Belapur, Navi Mumbai, the Applicant is convicted for the offences punishable u/s.4 & 6 of the Protection of Children From Sexual Offences Act, 2012 ('POCSO' Act) and u/s. 376 & 506 of the of Indian Penal Code, 1860 ('I.P.C.' for short) and sentenced to suffer rigorous imprisonment of 10 years in addition to fine. The appeal is recently admitted on 06.08.2024 and is pending for final hearing.

3. The case of the prosecution in short, is as under. PW-1 Complainant (Simran) is mother of the Victim PW-2. The Complainant is resident of Sanpada, residing with her husband and two daughters. Husband of the Complainant is in the business of catering. On 30.10.2017 at about 17.00 hours, her neighbour Asha called and informed the Complainant that on 28.10.2017, the Applicant has raped her daughter and this is informed by the daughter of the Complainant to the neighbour that the daughter was having pain in stomach. That when the neighbour took the victim to the doctor, doctor asked the neighbour to bring parents of the Victim. On inquiry with the Victim, she told the Complainant/mother that on 28.10.2017 at about 2 p.m. her friend Reshma told her that the Applicant was calling the Victim to his shop. Hence, the Victim went to the house of the Applicant, who locked the door from inside, removed the clothes of the Victim and by shutting her mouth,

committed rape / sexual intercourse. That the Applicant threatened the Victim not to disclose the incident to her parents. According to the prosecution, the incident has taken place on 26.10.2017 to 28.10.2017.

4. Learned counsel for the Applicant submitted that he was arrested on the date of FIR i.e. 31.10.2017 and has been under detention since then. He submitted that the Applicant has already suffered detention / long incarceration of 7 years and 4 months, out of 10 years' sentence awarded. It is submitted that the Applicant has no antecedents and since the appeal is recently admitted, it is not likely to be taken up immediately. The Applicant has already suffered detention for more than half of the sentence. It is therefore prayed that interim bail be granted. It is submitted that the Victim's statement about rape at 2 p.m. on 28.10.2017 is directly contrary to her admission during deposition that she has attended school from 12 to 5 p.m. on 26.10.2017, 27.10.2017 & 28.10.2017. It is submitted that the prosecution has not substantiated whether the Victim really attended school on those days and school records are not verified. It is submitted that the Victim's testimony is not corroborated at all and there are material contradictions. It is submitted that when there is lack of evidence and contradictions in the material, the Accused is entitled to benefit of doubt. It is contended that mother of the Victim i.e. Complainant PW-1 has admitted that her daughter went to school on 26.10.2017, 27.10.2017 & 28.10.2017 and that the Accused was known to the family. It is further submitted that the Victim herself (PW-2) has admitted that she used to go to house of

the Accused for demanding money along with her mother and quarrel had taken place between her mother and Accused and that her mother was in anger. It is further submitted that it is admitted by the Victim that on 30.10.2017 the Accused could not give money to her mother. It is therefore, submitted that this is a case of false implication.

5. Learned APP for Respondent No.1 has opposed the bail application. It is submitted that the age of the Victim is proved and testimony of the Victim is sufficient to prove the guilt. It is submitted that according to the school leaving certificate, the Victim's date of birth is 07.05.2006 and therefore, on the date of incident, the Victim was 11 years old. It is submitted that the Victim's testimony is sufficient to prove penetrative assault and therefore, this is not a case to show any indulgence.

6. Learned counsel for Respondent No.2-Victim (appointed through Legal Aid Services) has supported the learned APP and has additionally submitted that Article Exhibit No. 6 which is full shirt of the Applicant has been found with semen stains. She has relied upon memorandum of panchnama Exh.55 which is apparently statement of the Applicant recorded in presence of panchas and Police Officer admitting the guilt and stating that after the sexual intercourse with the Victim, he had wiped his private part with a shirt used for 'pochha' and he is willing to show the place where the said shirt used as 'pochha' is kept for handing over the same.

7. I have carefully considered the submissions and perused the record.

8. Evidence of PW-1 - Complainant/mother indicates that in examination-in-chief, she has stated that the Victim has not stated anything to her. However, in cross-examination she stated that the Victim has narrated the incident. She has admitted that school time of her daughter was from 12 p.m. to 5 p.m. and her daughter had gone to school on 26.10.2017, 27.10.2017 & 28.10.2017. She has admitted that she has not witnessed alleged incident. In the cross-examination she has admitted that she has not narrated the incident to her husband.

9. Perusal of evidence of PW-2 - Victim shows that she had gone to the school on 26.10.2017 to 28.10.2017. That her father is doing business of catering and her mother used to demand money from the Accused and sometime she used to go in the house of the Accused for demanding money along with her mother and there were quarrel between her mother and the Accused and therefore, her mother was in anger. She has admitted that she has not narrated the incident to her mother. She has further admitted that whenever she went to the house of the Applicant with her mother for money, 3/4 people were residing in the house. She has admitted that she has told police that she came to know about the word 'rape' by watching TV serial Crime Patrol.

10. Perusal of the evidence of PW-3 Doctor shows that the Victim has been examined 56 hours after the alleged last episode and there

was no injury on the private part of the Victim. It is admitted that even after the bath of a Victim after sexual assault, the spermatozoa would be still present in the vagina or near the survival opening. At this stage, mere presence of semen stains on the shirt of the Accused, does not indicate anything to prove the guilt about alleged act with the Victim. The Victim's friend Reshma PW-10 has admitted that she has not seen the Victim going in the house of the Applicant. According to the learned counsel for the Applicant, the CDR of the Applicant's mobile phone indicates that at the relevant time the Applicant was in his shop and not in the house as alleged. Evidence of PW-14 Headmistress of the school indicates that she has admitted in the cross-examination that the birth certificate of the Victim submitted at the time of admission in school has not been verified by the school.

11. Perusal of Applicant's statement under section 313 of the Cr.P.C. shows that he was running a grocery store and there was pending *udhari* from the Complainant Simran and her friend Asha and he had stopped giving grocery on credit and there were quarrels about it. Perusal of the evidence of DW-2 who was running shop along with the Applicant, shows that on 26.10.2017 and 27.10.2017, he and Applicant were on shop. On 29.10.2017 there was quarrel at the shop between one lady and the Applicant on some monetary issue. However, his statement was not recorded by the Police.

12. So far as the memorandum of panchnama Ex.55 is concerned, at this stage, the statement therein being clearly of confessional nature cannot be considered. Also, at this stage, the discovery of

consequential information, in the present case about the use of shirt used as 'pochha', and its recovery thereafter, cannot connect the Applicant to the alleged crime, in as much as a person can use any cloth or shirt to wipe his private part and the semen stains can be found on such cloth but that, per se, cannot prove that the said semen was wiped after penetrative assault on the Victim.

13. In the facts and circumstances narrated above and considering various admissions of the Victim and her mother and her friend, at least at this stage, clear motive is not emerging and arguable case is made out. The Appeal is recently admitted and is not likely to be taken up for final hearing in short time. The Accused is sentenced to suffer fixed term sentence of 10 years, out of which he has already suffered detention of more than 7 years & 4 months, which is more than 50% of the sentence.

14. In **Javed Gulam Nabi Shaikh v. State of Maharashtra and Another¹**, the Hon'ble Supreme Court has recently held as under.

“17. If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.”

15. In the above circumstances, I am inclined to grant bail. Hence, the following order.

¹ 2024 (9) SCC 813

- (a) The remaining sentence of the Applicant under impugned Judgment and Order dated 28.06.2024 passed passed by Additional Sessions Judge, Belapur, Navi Mumbai in Special Case No. 279 of 2023 (old Thane Special Case No. 16/2018), is suspended.
- (b) The Applicant - Ajay Gangabaksh Singh be released on bail on execution of P.R. Bond of Rs.25,000/- with one or more surety in like amount.
- (c) The Applicant is directed not to contact or approach the Victim or her family members directly or indirectly.
- (d) The Applicant is also directed to report to Sanpada police station on 1st Monday in every two months till the disposal of the Appeal.

(M.M. SATHAYE, J.)