

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

**INTERIM APPLICATION NO.4053 OF 2024
IN
CRIMINAL APPEAL NO.1102 OF 2024**

Sagar Mahendra Mohite

.... Applicant

versus

The State of Maharashtra & Anr.

.... Respondents

.....

- Mr. Vivek Arote a/w Akshay Dingale, Advocate for Applicant.
- Mr. Pankaj P. Devkar, APP for the State/Respondent.
- Mr. Pratik Ingle, Advocate for Respondent No.2.

**CORAM : SARANG V. KOTWAL, J.
DATE : 01st AUGUST, 2025**

P.C. :

1. This is an application for bail pending final disposal of the Appeal preferred by the Applicant. The Applicant was convicted and sentenced by the learned Additional Sessions Judge, Vaduj vide the Judgment and Order dated 30/08/2024 passed in Special (POCSO) Case No.20/2021, as follows :

- (i) The Applicant was convicted for commission of the offence punishable u/s 452 of the Indian Penal Code and was sentenced to suffer rigorous

imprisonment for three years and to pay a fine of Rs.2,000/- and in default of payment of fine to suffer simple imprisonment for two months.

- (ii) The Applicant was further convicted for commission of the offence punishable u/s 4 of the Protection of Children from Sexual Offences Act, 2012 and was sentenced to suffer rigorous imprisonment for twenty years and to pay a fine of Rs.5,000/- and in default of payment of fine to suffer simple imprisonment for five months.

- (iii) All the substantive sentences were directed to run concurrently.

2. Heard Mr. Vivek Arote, learned counsel for the Applicant, Mr. Pratik Ingle, learned counsel for the Respondent No.2 and Mr. Pankaj P. Devkar, learned APP for the State.

3. Learned counsel for the Applicant submitted that the Applicant was on bail during trial. He was in custody initially for a few months during the investigation and then after his conviction, on 30/08/2024, he was again taken in custody. As of today, he is in custody for almost 16 months. Learned counsel

for the Applicant further submitted that the incident could not have taken place as is described in the prosecution case. According to the prosecution witnesses, when the incident took place, the victim was on the first floor inside the house and all the other family members including, her father, mother and grandmother were sleeping on the ground floor. It was not possible for the Applicant to have entered in the house and commit rape on the victim and then escape from the same place. There was no way that he could have done it without anybody noticing it. The victim also had not shouted till the very last. The medical evidence does not support the victim's deposition.

4. Learned counsel for the Respondent No.2 as well as the learned APP submitted that the Medical Officer has opined that the incident could not be ruled out. They further submitted that the Appellant while going away had bit the victim's father's hand and it is supported by the medical evidence. Therefore, to that extent, there is corroboration. Since it was night time, it was possible for the Applicant to enter the house and commit this offence.

5. The prosecution case is that on the date of the incident, the victim was around 15 years and 3 months of age. Her date of birth is 28/10/2005. The incident had taken place between the night of 14/02/2021 and 15/02/2021. The Applicant had gone to the first floor where the victim was sleeping and had committed this offence.

6. I have considered the submissions made by the learned counsel for both the sides and have perused the deposition of the witnesses annexed to the application. The most important evidence is that of the victim herself, who is examined as PW.3. She has stated that in the night of the incident, she was studying on the first floor of the house. All the other family members were sleeping on the ground floor. She slept on the same floor after her studies. After about 1 a.m. she realized that her clothes were removed and that the Applicant was sleeping next to her. He committed rape on her. She pushed him and raised shouts. He tried to run away. The victim's father tried to catch the Applicant but the Applicant bit on his hand and ran away.

P.W.3 came down. Initially she did not tell the incident to anybody. But after some time, she disclosed the incident to her parents. They went to the police station and lodged their FIR. She was sent for medical examination.

7. P.W.1 was the mother of the victim. She stated that on 14/02/2021 she herself, her husband, her mother and her younger daughter had slept on the ground floor. The victim was studying on the first floor. At about 01.30 a.m., her mother had gone outside for answering nature's call. She came back and went to sleep. After some time, she heard the shouts of the victim. They saw that the Applicant was climbing down from the first floor. He bit her husband's hand and ran away. Similar is the deposition of the victim's father, who was examined as P.W.4. According to the prosecution case, the Applicant's shirt was torn and the pieces of his shirt as well as his mobile phone were left at the spot. They were recovered subsequently. It is significant to note that the prosecution has not produced any evidence to show that the recovered mobile was belonging to the Applicant.

8. There is medical evidence in the form of P.W.7 Dr. Vilas Salunkhe who had examined the victim's father. He had noticed the injury behind the wrist joint of the victim's father. It was of the size 2 x 0.5 x 0.5 cm over the right forearm. But he has stated that the injury was caused by a hard and blunt object. He did described the injury as a bite mark. To that effect there is no corroboration to the prosecution evidence.
9. P.W.8 Dr. Priyanka Trimukhe had examined the victim. She has deposed that she found that the victim's hymen was ruptured and there were no other injuries. She admitted in the cross-examination that she had not noticed any external injury on the victim. She admitted that the hymen could be ruptured by other activities such as cycling, heavy work, weight lifting etc. She had not seen any bleeding, rashes on the victim's private parts. Thus, the medical evidence is not supporting the prosecution case. As rightly submitted that the learned counsel for the Applicant, it is hard to believe that the incident could have taken place in the manner which is described by the victim and her parents. It is difficult to believe that the Applicant could

enter their house in the night, he could go to the first floor, he could sleep next to the victim and then commit rape on her without any struggle on her part or without any shouts raised by her.

10. As mentioned earlier, there is hardly any other corroborative piece of evidence. The Applicant himself is 22 years of age. He is sentenced to suffer rigorous imprisonment for 20 years. He was on bail during the trial. There are no allegations of misuse of that liberty.

11. Considering all these aspects, I am inclined to grant bail to the Applicant during pendency of his Appeal.

12. Hence, the following order :

ORDER

- (i) During pendency and final disposal of the Criminal Appeal No.1102 of 2024, the Applicant is directed to be released on bail on his furnishing P.R. bond in the sum of Rs.25,000/- (Rupees

Twenty Five 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.)