

Rekha Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 4640 OF 2024
IN
CRIMINAL APPEAL NO. 608 OF 2023

Shaikh Mohammad Tariq Idrish ...Applicant

Versus

U. T. Of Dadra And Nagar Haveli And Ors. ...Respondents

Mr. Balkrishna Joshi with Virendra Pethe, for the Applicant/
Appellant.

Mr. Ashwin Thool, standing Counsel with Archishmati
Chandramore, for the Respondent No.1.

Ms. Swarta Suryawanshi, for the Respondent No.2 (Appointed
Advocate)

CORAM: R. M. JOSHI, J.

DATED: 12th JANUARY, 2026.

PC:-

1. This application is for suspension of sentence and enlargement of the appellant / accused on bail in connection with Judgment and Order dated 17th February, 2023 , passed in POCSO Spl. Case No. 04 of 2022, whereby the appellant is convicted for the offence punishable under Section 376 of the Indian Penal Code and under Sections 6 of Protection of Children from Sexual Offences Act, 2012 (for short “POCSO Act”) and sentenced to suffer maximum sentence of 15 years with fine.

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2. Learned Counsel for the Appellant submits that the evidence of the victim is not reliable and trustworthy and the same is not supported by the medical evidence. It is his submission that as per the case of the victim herself, she was never administered any substance by the accused so that she can be sexually assaulted. In this regard, attention of the Court is drawn to the examination-in-chief of the victim wherein she claimed that she was thirsty and hence after seeking permission of the accused, she went to the kitchen and drank water. It is his submission that if it is a case of the victim that her hands were tied and she resisted to the alleged act done by the accused, there ought to have been some evidence indicating injuries on her person, which are absent. It is submitted that the Investigation Officer has accepted the fact that the *Madarsa* wherein the incident has taken place was covered by the CCTV. Attention of the Court is drawn to the cross-examination of the Investigating Officer, which shows that the IO went through the CCTV footage but failed to produce the same before the Court. It is his submission that the Appellant/Accused had placed on record said CCTV footage in a pen-drive, however, the Court refused to accept the said evidence for want of certificate under Section 65B of the Evidence Act. It is his submission that the Appellant/Accused is behind the bar since for a period of four years now and considering the possibility of his success in the Appeal, he deserves bail. Learned Counsel for the Appellant/Applicant further submits that there is no criminal history behind him.

3. Learned standing Counsel for Union of India and learned Counsel for the Respondent No.2 oppose the Application. It is their contention that the testimony of victim is sufficient to convict the Appellant/Accused and the same is duly corroborated by the medical evidence. In this regard reference is made to the evidence of PW-3 Medical Officer. It is argued that since the victim became dizzy after consuming the water, she could not possibly resisted accised in full force so also taking into consider her age as compared with the age of the accused, in any case her asisistence would fall short. It is, therefore, submitted that non-presence of any injury mark on her person is not a ground to grant bail to the Appellant/Applicant.

4. In order to seeks suspension of substantive sentence and enlargement on bail, the Appellant/Applicant has to make out a *prima facie* case of fair chances of success in the Appeal. Herein the case, the victim claims about she being sexually assaulted by the accused, however, it is her contention that after drinking water she became dizzy and accused started overpowering her. Since she probably became unconscious, she is not narrating the exact incident of sexual intercourse in her evidence. She, however, specifically states that the Appellant/Applicant had tied her hands and she resisted. Even if it is accepted that the victim could not have registered full fledged resistance to the accused, however, she claims that they had fight and her hands were tied. The victim was examined. The incident is occurred on 21st November, 2021 and the victim is examined by the Medical Officer on 23rd November,

2021. In such circumstances, there could have been some injuries on her person. Apart from this, the victim admits that on the next of the incident she went to another hospital, however, she has not disclosed the occurrence of the incident to the Medical Officer therein.

5. No doubt, the testimony of a victim if inspires confidence, it sufficient to convict the accused person even without corroboration. However, at the same time, merely because there is no enmity between the parties, the case of accused cannot be discarded by ignoring evidence on record. Herein this case, most importantly the Investigating Officer admits about existence of CCTV in the *Madarsa*. The admissions of the panch witnesses so also the Investigating Officer clearly indicate that it was possible for the Investigating Agency to bring it on record through CCTV footage that at the instance of the accused, the victim went to the gate of the hall locked it and thereafter, the incident of question had occurred. It could have also be seen therefrom as to whether the accused was present in *Madarsa* at the time of occurrence of incident or had left the place as claimed by him. The Investigating Officer candidly admits on going through the CCTV footage in question. Now, question arises what has prevented the Investigating Agency to bring the said CCTV footage on record. There is no justification/reason provided for it's non production. This Court finds substance in the contention of Counsel for the Appellant/Applicant that for non production of the CCTV footage, adverse inference may be drawn that since it was showing the

innocence of the accused, it was withheld from the Court. Similarly, merely because of factum of torn hymen without any injuries attributed to the incident, there can be no conviction of accused.

6. The above discussion clearly indicates that the Appellant/Applicant has a reasonable chance of success in the Appeal. He is behind the bar for a period of 4 ½ years . The Appeal is not likely to be heard in short period of time. The Appellant/Applicant has no criminal history and he is not likely to flee from justice. Hence, the following order.

ORDER

- (a) The Interim Application is allowed.
- (b) The substantive sentence imposed against the Applicant/ Appellant by Judgment and Order dated 17th February, 2023 passed in POCSO Spl. Case No. 4 of 2023 stands suspended till decision of the Appeal.
- (c) The Applicant/Appellant be enlarged on bail on furnishing P.R. bond of Rs.15,000/- with one surety in the like amount.
- (d) The Applicant/Appellant not to contact the victim or other girls witnesses in any manner whatsoever.

(f) Any breach of aforesaid condition shall result into forthwith cancellation of bail.

7. In view of the above, Interim Application stands disposed of.

8. It is clarified that the above observations are made on prima facie consideration of the material on record and the same shall not bind the parties during the final hearing of the Appeal.

(R. M. JOSHI, J.)