

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

**CRIMINAL INTERIM BAIL APPLICATION NO.01 OF 2019  
IN  
CRIMINAL APPEAL NO.907 OF 2019**

Dhanaji Baliram Adasul

..Applicant

Vs.

The State of Maharashtra & Anr.

..Respondents

.....

Mr. Aniket Vagal, Advocate for Applicant

Ms. S. V. Sonawane, APP for Respondent / State.

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**CORAM : C. V. BHADANG, J.**

**DATE: 30<sup>th</sup> JUNE, 2020**

**PC. :**

. This is an application for suspension of sentence and release of the applicant on bail.

2. The applicant has been convicted by the learned Special Judge for the offences punishable under Section 376(2)(f)(i) and (n), Section 354-A and 342 of IPC and Section 5(m)(n) r/w. Section 6 and Section 9(m)(n) and Section 10 of the Protection of Children from Sexual Offences Act. (POCSO Act).

3. For the offence punishable under Section 376(2)(f)(i) and (n) of IPC and Section 5(m)(n) r/w. Section 6 of the POCSO Act, the applicant is sentenced to suffer R.I. for ten years and to pay fine of Rs.10,000/- and in default, to undergo S.I. for six months.

4. For the offence punishable under Section 354-A of IPC, the applicant is sentenced to suffer R.I. for one year and to pay fine of Rs.5,000/- and in default, to undergo S.I. for three months. For the offence punishable under Section 342 of IPC, the applicant is sentenced to suffer R.I. for one year and to pay fine of Rs.1,000/- and in default, to undergo S.I. for six months. Lastly, for the offence punishable under Section 9(m)(n) r/w. Section 10 of the POCSO Act, the applicant is sentenced to suffer R.I. for five years and to pay fine of Rs.10,000/- and in default, to undergo S.I. for six months.

5. The prosecution case is that on 10/12/2016, the applicant committed rape on his daughter (PW.2) aged about 10 years who was then studying in 4<sup>th</sup> Standard. The prosecution apart from the victim PW.2 has examined her mother Kavita (PW.1) and Jayashree (PW.4) who is the aunt of the victim and was residing near the house of the applicant where the incident is alleged to have happened.

6. Heard the learned counsel for the applicant and the learned APP for the respondent / State. With the assistance of the learned counsel for the parties, I have gone through the prosecution evidence and I do not find that any case for exercise of discretion is made out.

7. The learned counsel for the applicant submitted that in the history given at the time of medical examination of the victim, to the Medical Officer, the alleged incident of the applicant having committed rape was not disclosed. He has also taken exception to the acceptability of the evidence of the victim and the other

prosecution witnesses. It is also pointed out that in the medical report only the possibility of the victim being subjected to rape has been expressed and there is no clear and positive opinion that the victim was indeed subjected to rape.

8. The contention in my considered view cannot prima facie be accepted. Prima facie the evidence of the victim who was only 10 years of age at the time of the incident alongwith her mother Kavita (PW.1) and Jayashree (PW.4) coupled with the medical evidence prima facie shows the complicity of the applicant. Considering the over all circumstances, no case for suspension of sentence is made out. The application is accordingly dismissed. Needless to mention that the observations herein are only of a prima facie nature limited for the purpose of deciding the present application for suspension.

**C.V. BHADANG, J.**