

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 2898 OF 2016

IN

CRIMINAL APPEAL NO. 345 OF 2016

Umerpasha Khadir Momin,
Age : 30 years, Occu. Labour,
R/o. Khasbag area, Behind Devi Temple,
Beed, Tq. & Dist. Beed.

....Applicant.

Versus

The State of Maharashtra.

...Respondent

.....
Mr. Sudarshan J. Salunke, Advocate for the applicant.
Mr A. V. Deshmukh, APP for respondent/State.
.....

CORAM : V. L. ACHLIYA, J.
DATED : 23RD AUGUST, 2016.

PER COURT :

1. Heard. Perused the application, impugned judgment and order passed by the trial Court and the evidence of the witnesses examined by the prosecution. Although the applicant has been charged u/s 377 and 506 of the IPC and sections 7, 11 of Protection of Children from Sexual Offences Act, the accused has been acquitted of the offence punishable u/s 377 of IPC. The applicant has been convicted for committing offence u/s 7, 11, 12 of the POSCO Act and section 506 of the IPC and awarded sentence of five years for committing offence u/s 7 of the POSCO Act.

2. The learned counsel for the applicant has strenuously contended that, the trial Court has not properly appreciated the evidence. Learned counsel has pointed out that before the identification parade, the accused was shown to the complainant in police station and thereafter parade was organized and therefore the identification of the accused is of no consequence to establish the complicity of accused in commission of offence. He has further pointed out that, as per the

medical examination, no injury or mark of violence were noticed during the medical examination of the victim conducted on the day of the incident. He has further pointed out that the entire case of prosecution appears to be not natural. There is no corroboration in the form of medical evidence to testimony of victim-boy to connect the applicant with the commission of the offence. He has further submitted that, there are number of circumstances brought on record which makes the case of the prosecution to be unbelievable.

3. Learned APP has opposed the application with contention that the victim boy has duly supported the case of the prosecution. PW-9 though declared hostile, he has deposed to extent that he had seen the applicant taking victim-boy in the Auto-Rickshaw.

4. Having appreciated the submissions advanced, I am of the view that the arguable case has been made out to be considered in appeal. The applicant is awarded maximum sentence of five years. He is in jail since his arrest i.e. 31.10.2014 and about to complete the period of two years. The appeal will take long time to be decided finally. I am therefore of the view that the applicant deserves to be enlarged on bail. As per the directions given earlier, the applicant has already filed an undertaking that he will not enter into the city of Beed. Hence, the following order.

ORDER

- (1) The Criminal Application No. 2898 of 2016 is allowed in terms of prayer clause 'B' and 'C'.
- (2) Pending disposal of the appeal, sentence awarded by the trial Court stands suspended.
- (3) Pending disposal of the appeal, applicant be released on bail on his furnishing bail in the sum of Rs. 50,000/- (Rupees Twenty Five Thousand) with one or two sureties in the like amount on the following conditions:

- (i) Applicant shall visit and record his attendance with Beed City Police Station, Dist. Beed, on every 2nd & 4th Sunday in between 10:00 AM to 11:00 AM in each month, till disposal of the appeal.
 - (ii) Till further orders, the applicant shall not enter into the Beed city.
 - (iii) Applicant shall furnish the names, addresses and phone numbers with residential proof of his three close relatives.
 - (iv) Applicant shall not cause any threat to the complainant, victim and witnesses in the case.
 - (v) Applicant shall not involve in any criminal activities.
- (4) In case of breach of any of the conditions as above, bail granted to the applicant shall be liable to be cancelled.
- (5) Bail to be furnished in trial Court.

(V. L. ACHLIYA)
JUDGE