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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO. 4714 OF 2016
IN APPEAL/486/2016**

AMAR S/O BALAJI SAVASE
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Salunke Sudarshan J
APP for Respondents: Mr.R.B.Bagul.

...

CORAM : V.L.ACHLIYA,J.

DATE : 28/09/2016

PER COURT :-

The applicant/appellant (Orig. accused no.2) has preferred this application seeking bail on the grounds as set out in the application.

2] The learned counsel for the applicant contended that there is no cogent, convincing and reliable evidence to sustain the conviction of applicant under Section 17 of the Prevention of Children from Sexual Offences Act,2012 (for short POCSO Act). He has submitted that though the trial Court has tried the applicant-accused for committing offence under Section 377 r.w. 34 of IPC and under Section 4 and 17 of POCSO Act alongwith accused no.1, the trial Court has convicted the applicant only for committing offence under

Section 17 of the POCSO Act. The accused no.1 who was tried for offence punishable under Section 377 of IPC and under Section 4 of POCSO Act, held guilty of said offence and convicted under Section 377 and u/s 4 of POCSO Act. The learned counsel has invited attention to the cross examination of the victim boy i.e. P.W.4 wherein the victim has stated that though the applicant/accused no.2 was not present still her mother implicated applicant/accused no.2. He has therefore, submitted that there is arguable case in appeal to be considered in favour of applicant. The sentence awarded is of 7 years. The applicant has already spent more than 1 year and 9 months in jail. The charge levelled against the applicant is that he has abetted the commission of offence punishable under Section 4 of POCSO Act. He therefore, urged to release the applicant on bail.

3] The learned APP has opposed the application with contention that there is strong evidence to connect the applicant with commission of offence. He has submitted that victim boy and his parents have fully supported the case of the prosecution. The medical evidence duly corroborates the testimony of the victim boy. He has further submitted that solitary admission brought in cross examination of P.W.1 is not sufficient to discard the entire testimony of the victim.

4] Having appreciated the submission advanced in the light of evidence on record, the nature of the offence, the conviction awarded, I am of the view that the case is made out to entertain the application. It appears from the judgment of the trial Court that though the applicant/appellant has been charged under Section 377 r.w. 34 of IPC and u/s 4 and 17 of the POCSO Act, alongwith accused no.1, the charge proved against the applicant is only under Section 17 of the POCSO Act. The trial Court has found accused no.2 to have abetted commission of offence and therefore, convicted the applicant under Section 17 of POCSO Act. In this view, I am inclined to enlarge the applicant on bail. It will take long time to hear the appeal. The sentence awarded is of 7 years. The applicant has already spent about 1 year and 9 months in jail. Hence following order :

ORDER

i] Pending disposal of Appeal, the sentence awarded by the trial Court stands suspended on condition of deposit of fine.

ii] Pending disposal of appeal, applicant/appellant be released on bail on his furnishing bail in the sum of Rs.50,000/- with one or two solvent sureties in the like amount on following conditions.

[a] The applicant shall attend the concerned police station once in the last Sunday in between 10 to 11 a.m. to record his appearance.

[b] The applicant shall furnish the names and addresses with phone numbers of his three close relatives.

[c] The applicant shall not cause threat to complainant the victim and other witnesses.

[d] The applicant shall attend this Court as and when the matter will be listed for final hearing.

[e] In the event of change in address the applicant shall furnish the new address to concern police station as well as this Court.

[f] In the event of failure to comply any of the condition the bail granted to applicant shall be liable to be cancelled.

(V.L.ACHLIYA,J.)

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