

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.165 OF 2016

IN

CRIMINAL APPEAL NO.997 OF 2015

MOHD. AZAD AHMED ALI KHAN)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Shri Aniket Vagal i/b. Shri Somet S. Shirsat, Advocate for the Applicant.

Smt.PPBhosale, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 4th MARCH 2016.

P.C. :

1 The appeal filed by the applicant challenging his conviction in respect of offences punishable under Section 366 and Section 363 of the Indian Penal Code (IPC), as also, the offence punishable under Section 4 of the Protection of Children

from Sexual Offences Act (POCSO Act), has already been admitted. By the present application, the applicant prays that the substantive sentences imposed upon him be suspended during the pendency of the appeal, and that he be released on bail.

2 The applicant has been sentenced to suffer Rigorous Imprisonment for 10 years and to pay a fine of Rs.3,000/- with respect to the offence punishable under Section 366 of the IPC. He has been sentenced to suffer Rigorous Imprisonment for 7 years and to pay a fine of Rs.2,000/- with respect to the offence punishable under Section 363 of the IPC. So far as the offence punishable under Section 4 of the POCSO Act is concerned, he has been sentenced to suffer Rigorous Imprisonment for 7 years and to pay a fine of Rs.2,000/-. The sentences have been made to run concurrently.

3 The learned counsel for the applicant submitted that clearly the applicant and the victim were in love and that the victim herself eloped with the applicant. He pointed out that even

as per the case of the prosecution, the age of the victim at the material time was about 17 years and 6 months. He submitted that since the case is apparently arising out of love affair between the appellant and the victim, the applicant deserves to be released on bail. It is also pointed out that the applicant is in custody for a period of more than 3 years.

4 I have been taken through the relevant part of the evidence, and more particularly, that of the victim, and the Medical Officer who had examined her.

5 Indeed, I find great substance in the contention that *prima facie* no offences punishable under Section 366 of the IPC and / or Section 363 of the IPC are disclosed. However, the same cannot said with respect to the offence punishable under Section 4 of the POCSO Act which provides for a minimum sentence of imprisonment for 7 years.

6 In these circumstances, at present, I am not inclined to suspend the substantive sentences imposed upon the applicant, more particularly because, he was not on bail during the trial. If the appeal, however, cannot be heard expeditiously, the applicant should be given an opportunity to apply afresh seeking suspension of sentence and his release on bail.

7 The application is rejected.

 However, liberty to the applicant to apply afresh for suspension of sentence and his release on bail during the pendency of the appeal, in the event of the appeal not being taken up for final hearing by 27th October 2016.

(ABHAY M. THIPSAY, J.)