

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

CRIMINAL APPLICATION NO. 207 OF 2017
IN
CRIMINAL APPEAL NO. 15 OF 2017

Maroti S/o Yeshwant Pawale,
Age : 20 years, Occu. Agriculturist,
R/o. Thara, Tq. Kinwat, Dist. Nanded.

.. Applicant

Versus

The State of Maharashtra.

.. Respondent

.....
Mr Ashish B. Shinde, Advocate for the applicant
Mr K. S. Patil, APP for respondent/State
.....

**CORAM : V.L. ACHLIYA, J.
DATED : 02.02.2017.**

PER COURT :

. The applicant has moved this application seeking suspension of sentence and release on bail during the pendency of appeal for the reasons set out in detail in the application.

2. Heard learned counsel for the applicant & APP for the State and further perused the impugned Judgment & copies of depositions placed on record.

3. The applicant was tried for offence punishable under Sections 354(A)(1)(i) r/w Section 354(A)(2) of the Indian Penal Code and Sections 7, 8 and 9(m) & 9(n) of the Protection of Children from Sexual Offences Act (in short "POSCO Act"). On conclusion of trial, the learned Special Judge has convicted the applicant-accused under Section 9(m) punishable with Section 10 of the POSCO Act and sentenced to suffer RI for five years with fine of Rs. 1,000/-. The applicant-accused has been acquitted u/s 354(A)(1)(i) r/w Section 354(A)(2) of the IPC. Being aggrieved, the applicant-appellant has preferred Appeal and pending disposal thereof, the applicant has prayed for release on bail.

4. Learned counsel for the applicant strenuously contended that, the prosecution has failed to prove the guilt of the accused beyond reasonable doubt. He submits that, the case against the applicant is false. The applicant is a cousin uncle of the prosecutrix and he has been falsely implicated due to dispute of land between the family of the accused and prosecutrix. He further submits that, there is a good case to succeed in appeal. The applicant was on bail during trial and he has not misused the conditions of bail. He, therefore, urged to release the applicant on bail during pendency of appeal as, it will not be possible to take up the appeal for final hearing.

5. Learned APP has opposed the application with contention that there is a strong evidence to connect the applicant with the commission of offence. He was found to have sexually assaulted the minor girl aged about 7 years. He, therefore, urged not to entertain the request of the applicant to enlarge him on bail.

6. Having appreciated the submissions advanced in the light of the Judgment & Order passed by the trial Court and further perused the testimonies of the prosecution witnesses, I am of the view that, arguable case has been made out to be considered in appeal. During the trial, the applicant was on bail. It is nowhere the case of the prosecution that the applicant has misused the liberty granted and committed breach of conditions of bail. On due consideration of the nature of the offence and sentence awarded, in my view, the applicant deserves to be enlarged on bail as it will not be possible to take up the appeal immediately for final hearing. I am, therefore, inclined to pass the following order.

ORDER

- (1) Pending disposal of the appeal, the execution of substantive sentence stands suspended subject to deposit of fine amount by the applicant.

- (2) Pending disposal of the appeal, the applicant be enlarged on bail on his furnishing bail in the sum of Rs. 25000/- (Rupees Twenty Five Thousand) with one surety in the like amount, on following conditions.
- (i) Pending disposal of the appeal, the applicant shall attend Police Station Kinwat, Tq. Kinwat, Dist. Nanded, on last day of each month in between 10:00 to 11:00 AM.
 - (ii) The applicant shall not indulge into any offence of similar nature during the pendency of the Appeal.
 - (iii) The applicant shall furnish the names of his three close relatives with their addresses and phone numbers.
- (3) Bail be furnished in the trial Court within a period of three weeks from the date of this order, else the order passed stands vacated.
- (4) In the event of breach of any of the conditions as above, the bail granted to the applicant will be liable to be cancelled.
- (5) The Officer In-charge of the Police Station Kinwat, Tq. Kinwat, Dist. Nanded, is directed to submit the report of compliance of conditions of bail after every six months.
7. Criminal Application stands disposed of in above terms.

[V. L. ACHLIYA]
JUDGE