

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

**CRIMINAL APPLICATION NO.1604 OF 2017
IN
CRIMINAL APPEAL NO.122 OF 2017**

Milind s/o. Madhav Bhosale,
Age : 31 years, Occ. Labour,
r/o. Bhutmugali, Tq. Nilanga,
Dist. Latur ..Applicant

Vs.

The State of Maharashtra ..Respondents

--

Mr.R.D.Biradar, Advocate for appellants
Mr.G.O.Wattamwar, APP for respondent no.1
Mr.S.N.Rodge, Advocate for respondent no.2

--

**CORAM : SANGITRAO S. PATIL, J.
DATE : AUGUST 08, 2017**

PER COURT :

Heard the learned Counsel for the applicant
and the learned A.P.P. for the respondents.

2. The applicant has been convicted for the
offence punishable under Section 8 of the Protection
of Children from Sexual Offences Act ("POCSO Act",
for short) and sentenced to suffer rigorous
imprisonment for five years and to pay a fine of

Rs.500/-, in default to suffer rigorous imprisonment for one month. The applicant has deposited the fine amount before the Trial Court.

3. The learned Counsel for the applicant submits that the applicant is behind the bars since 16.08.2014. He has suffered imprisonment for about three years after the date of the incident. The maximum punishment for the offence under Section 8 of the POCSO Act is imprisonment for five years. The applicant has been acquitted of the other offences, against which the prosecution has not preferred any appeal. He submits that the applicant is a permanent resident of Bhutmugali, Tq. Nilanga, Dist. Latur. He is ready to abide by the conditions that may be imposed against him, in case his sentence of imprisonment is suspended until final decision of the appeal. He submits that the applicant has a good chance of appeal. He, therefore, prays that the sentence of imprisonment passed against the applicant may be suspended.

4. Mr.Rodge, the learned Counsel appearing for respondent no.2 strongly opposes the application. He submits that the offence is serious one and the applicant does not deserve to be released on bail.

5. The learned APP for respondent no.1 also opposes the application on the ground that the convict of the offence under the POCSO Act may not be released on bail by suspending his sentence of imprisonment.

6. The applicant has been convicted for the offence under Section 7 punishable under Section 8 of the POCSO Act. The punishment prescribed for the said offence is five years, which shall not be less than three years. The applicant has been sentenced to suffer rigorous imprisonment for five years and to pay a fine of Rs.500/-. He is behind the bars since 16.08.2014. As such, he has undergone about three years of imprisonment. The offence under Section 7 of the POCSO Act is comparatively of lesser gravity

than the offence under Section 3 punishable under Section 4 and the offence under Section 5 punishable under Section 6 of the POCSO Act. As stated above, the applicant has undergone imprisonment for a term, which is the minimum punishment prescribed for the offence under Section 7 punishable under Section 8 of the POCSO Act.

7. The appeal is still pending. It will take a considerable time for final disposal. The very purpose of the appeal would be frustrated if the applicant/appellant is asked to undergo the imprisonment during pendency of the appeal. In the circumstances, I think fit to suspend the substantive sentence of imprisonment passed against the applicant.

8. Hence, the following order :-

O R D E R

(i) The substantive sentence of imprisonment passed against the applicant/appellant shall remain

suspended until final decision of the appeal, on the condition that the applicant shall not indulge in any criminal activity and shall attend the Police Station, Kasar Shirsi, Tq. Nilanga, Dist.Latur, on the first day of each month at any time between 9.00 a.m. and 11.00 a.m. until final decision of the appeal.

(ii) The applicant shall furnish personal bond of Rs.20,000/- (Rs.Twenty Thousand) with one surety in the like amount.

(iii) The application is accordingly disposed of.

[SANGITRAO S. PATIL, J.]

kbp