

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

**CRIMINAL APPLICATION NO. 1835 OF 2017
IN
CRIMINAL APPEAL NO. 143 OF 2017**

Prakash s/o Vaijinath Naiknaware **APPLICANT**

V E R S U S

The State of Maharashtra **RESPONDENT**

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Mr. A.N.Nagargoje h/f Mr. B.R.Jaybhay,
Advocate for Applicant.

Mr. G.O.Wattamwar, A.P.P. for Resp. - State.

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CORAM : V.L.ACHLIYA, J.

DATE : 12th JUNE, 2017

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ORDER :

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

2. Heard the learned counsel for the applicant, A.P.P. for the respondent – State and further perused record and proceedings.

3. The applicant was tried for committing offences u/s 354,354-A,354-B,323 and 504 of the Indian Penal Code as well as u/s 10 of the Protection of Children from Sexual Offences Act [for short, 'POCSO Act']. On conclusion of trial, learned Sessions Judge, Osmanabad held the applicant guilty of said offences and awarded sentence to suffer rigorous imprisonment for five years and to pay fine of Rs. 2,000/- [Rupees Two Thousand]. Being aggrieved, the applicant has preferred Appeal.

4. Mr. Nagargoje, learned counsel for the applicant strenuously contended that the Judgment and Order passed by the trial Court is perverse and not sustainable in law. He submits that the prosecutrix as well as the complainant have turned hostile and not supported the prosecution case. He further submits that the trial Court has based the conviction mainly on the ground of statements of the prosecutrix and the complainant recorded before the Magistrate. Learned counsel further submits that during the trial, the applicant was on bail.

He submits that appellant has good case to succeed in Appeal and in case the sentence is not suspended, then there is likelihood that the Appeal filed by the appellant may become infructuous.

5. On the other hand, A.P.P. supported the Judgment and Order passed by the trial Court and submits that the applicant was tried for committing the offence of molestation and sexual assault on his own daughter. He, therefore, submits that looking to the nature of offence and reasons and findings recorded by the trial Court, the applicant may not be enlarged on bail. He further submits that if the applicant is enlarged on bail, there is every possibility that he may cause threat to the complainant and the victim.

6. Having appreciated the submissions advanced, I am of the view that arguable case has been made out to be considered in Appeal. At this stage of deciding this application, it is not desirable to make detail observations as to the merits of the case and sustainability of reasons and findings recorded by the trial Court. However, *prima facie*, I found substance in the say of the learned counsel for the applicant that arguable case is made out to be

considered in Appeal. It appears from the evidence of the prosecutrix as well as the complainant that they have not supported the prosecution case. In order to sustain the conviction for the offence for which the applicant/accused was tried, it is not sufficient to prove the presence of the accused in the house. The prosecutrix has categorically deposed that the applicant had not slept by her side nor attempted to remove her clothes. The complainant has admitted in her testimony that she wanted to teach lesson to the applicant/accused and, therefore, she lodged complaint against her husband. In the light of this evidence on record, I am of the view that the case is made out to entertain the application. I am, therefore, inclined to allow the application and pass the following order.

7. It is clarified that the observations as made above are made for the limited purpose of deciding this application and same shall not be construed as observations made to overall merit of the case.

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, applicant Prakash s/o Vaijnath Naiknaware be enlarged on bail on his furnishing bail in the sum of ₹ 50,000/- [Rupees Fifty Thousand] with one surety in the like amount, on following conditions.

[i] Pending disposal of the appeal, the applicant shall attend Police Station Shiradhon, District Osmanabad, on 2nd Sunday of each month in between 10.00 to 11.00 a.m.

[ii] The applicant shall not indulge into any offence of similar nature during the pendency of the Appeal.

[iii] The applicant shall not enter in village Murud till further orders from this Court.

[iv] The applicant shall not contact the

complainant and the victim during the pendency of the Appeal.

[3] In the event of breach of any of the conditions as above, the bail granted to the applicant will be liable to be cancelled.

[4] The Officer in-charge of the Police Station Shiradhon, District Osmanabad is directed to submit the report of compliance of conditions of bail after every six months.

[5] Bail be furnished in the trial Court within the period of suspension as ordered by the trial Court or within one week from the date of order. Failure to furnish the bail within the stipulated period, the order of grant of bail stands cancelled. Compliance report be sent to this Court.

[V.L.ACHLIYA, J.]