

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.172 OF 2017
IN
CRIMINAL APPEAL NO.88 OF 2017**

Nagraj Sudam Shinde)...Applicant

**V/s.
State Of Maharashtra)...Respondent**

Smt. Nasreen Ayubi appointed advocate for the Applicant.

Ms. V.S.Mhaispurkar, APP for the Respondent - State.

Ms. Sana Mujawar for Intervenor.

CORAM : A. M. BADAR, J.

DATE : 15th MARCH, 2017.

P.C. :

This is an application for suspension of sentence and releasing the Applicant/Accused on bail during the pendency of the appeal filed by him.

2 The Applicant/Accused has been convicted of the offence punishable under Section 8 of the Protection of Children from Sexual Offences Act, 2012 (For the sake of brevity 'POCSO Act') and has been sentenced to suffer RI for 3 years apart from

payment of fine of Rs.10,000/- in default to undergo RI for three months. The Appellant/Accused has been acquitted of the offence punishable under Section 376(n) of the IPC, under Section 4 of the POCSO Act, 2012 and under Sections 3(1)(xi) and 3(1)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The appeal filed by him challenging his conviction and sentence is already admitted for final hearing.

3 Heard learned Advocate appearing for Applicant/Accused. She argued that out of substantive sentence of imprisonment of 3 years, the Applicant/Accused has already undergone sentence of about 2 years and 4 months. She further argued that there is delay in lodging the FIR and hence in submission of the learned Advocate appearing for the Applicant/Accused as major part of the sentence is already served by the Applicant/Accused, he be released on bail.

4 The learned APP opposed the application by contending that even acquittal of the Applicant-Accused for the other offences is not proper. The learned APP on instructions states that the State has not decided to challenge acquittal of the

Applicant-Accused of the offence punishable under Section 376(n) of the IPC, under Section 4 of the POCSO Act, 2012 and under Sections 3(1)(xi) and 3(1)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The learned APP further argued that proposal for enhancement of sentence so far as the offence punishable under Section 8 of the POCSO Act, 2012 is concerned, is still pending with the State.

5 I have also heard learned Advocate appearing for the Intervenor/First Informant. She argued that she is assisting the learned APP.

6 Though charged for several serious offences, on trial, the learned Additional Sessions Judge, Pune was pleased to convict the Applicant-Accused of the offence punishable under Section 8 of the POCSO Act, 2012 by holding that the Applicant-Accused is guilty of the sexual assault on the female child. Relevant portion from paragraphs 52 and 58 of the judgment of the learned trial Court needs re-production and they read thus:

“52.....This fact is admitted by the witness PW.1 Ranjana and PW.2 Victim girl, however, considering the deep intimacy of accused with victim girl and vice versa,

the testimony of victim girl that accused used to come close to her, used to kiss her, cannot be discarded. In this regard her testimony inspires confidence. It is true that act of fingering is not proved by cogent evidence and medical evidence, however, the act of kissing the victim girl and coming close to her by accused is presumed and is proved by prosecution beyond reasonable doubt. Presumption is not rebutted by the accused in this regard with preponderance of probabilities. Only because incident dated 26.06.2014 is not proved, the entire testimony of victim girl and her mother cannot be brushed aside. So it is proved by the prosecution that during the period in June-July 2014, victim girl went to the house of accused from time to time and accused committed sexual assault on her by outraging her modesty.

58. *Before I conclude, I must mention that as per settled principles of law though accused is charged of the offence punishable under Section 376(n) of IPC and Section 4 of POCSO, however he can be convicted for lesser offences even though the charge is not framed. So having scrutinized the entire evidence on record, I hold the accused guilty of offence punishable under Section 8 of POCSO Act and also under Section 354A of IPC for the same act done by the accused.....”.*

7 Short sentence of imprisonment for 3 years has been imposed on the Applicant-Accused for the offence defined in Section 7 of the POCSO Act, 2012. Out of 3 years' sentence, the Applicant-Accused has undisputedly undergone sentence of 2 years and 4 months. The Appeal is of the year 2017. This Court is hearing jail appeals of the year 2010. It is not possible to hear the Appeal filed by the Applicant-Accused in near future.

8 In this view of the matter, considering the offence proved against the Applicant-Accused and the sentence which he has already undergone for the same, he is entitled for liberty during the pendency of the appeal filed by him. As such, the order:

(1) Substantive sentence of imprisonment imposed on the Applicant-Accused is suspended and he is directed to be released on bail on executing PR bond in the sum of Rs.15,000/- and on furnishing surety in the like amount.

(2) As condition of this order, the Applicant-Accused should not contact victim female child in any manner and he should not extend any threat, promise or inducement either to the victim female child or her relatives.

(3) Application stands disposed of.

Parties to act upon an authenticated copy of this order.

Copy of this order be sent expeditiously to the Applicant-Accused, who is undergoing sentence in Yerwada Central Prison, Pune.

(A. M. BADAR, J.)