

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE JURISDICTION

**CRIMINAL APPLICTION NO.448 OF 2017
IN
CRIMINAL APPEAL NO.258 OF 2017
WITH
CRIMINAL APPLICTION NO.449 OF 2017
IN
CRIMINAL APPEAL NO.258 OF 2017**

Ramvilas Kaudiddin Kumbhar ... **Applicant**
V/s.
The State of Maharashtra ... **Respondent**

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Mr.B.B.Tiwari i/b. BBT Legal, Advocate for the Applicant.
Mr.Amit Palkar, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 19th APRIL 2017.

P.C. :

1 This is an application for suspension of sentence and releasing the applicant/accused on bail during pendency of appeal filed by him, which is already admitted for final hearing by this Court. The applicant/accused by the impugned Judgment and Order dated 04/03/2017 has been convicted of offences punishable under Section 10 of the Protection of Children from Sexual Offences Act ("POCSO Act" for the sake of brevity) as well as

Section 354 of the Indian Penal Code (“IPC” for the sake of brevity) For the offence punishable under Section 10 of the POCSO Act, he is sentenced to suffer rigorous imprisonment for five years apart from directing him to pay fine of Rs.1,000/- and in default to undergo further simple imprisonment for thirty days. For the offence punishable under Section 354 of the IPC though the applicant is convicted, no separate sentence has been imposed on him in view of provisions of Section 42 of the POCSO Act.

2 Heard the learned Advocate appearing for the applicant/accused. He argued that there is every possibility of false implication of applicant/accused in the crime in question as seen from evidence of P.W.No.4 Popat Malve Secretary of the Society and cross-examination of P.W.No.2 – the alleged victim of the crime in question. He further argued that during pendency of the trial, the applicant/accused was on bail.

3 The learned Additional Public Prosecutor opposed the application by pointing out my attention to Question No.18, 19 and onwards put to the prosecutrix i.e. P.W.No.2 and contended that offences are held to be proved by the learned trial Court.

4 I have carefully considered the rival submissions and also perused copies of depositions as well as the impugned Judgment and Order of conviction. The conviction is for the

offence of aggravated sexual assault as well as outraging the modesty of victim. Sentence is only of five years. During pendency of the appeal, the applicant/accused was on bail. It is not pointed out that during pendency of the trial, he has misused his liberty in any manner.

5 It is seen from evidence of P.W.No.4 Popat Malve – Secretary of the Managing Committee of the Society that the husband of the first informant, who happened to be aunt of the alleged victim, used to stack scrap material in the lobby of the building causing inconvenience to the residents and the present applicant, who was member of the Managing Committee of the Society, was questioning the husband of the first informant about stacking the scrap material in the passage which was just having width of three to four feet. Husband of the first informant was dealing in scrap business. This aspect in question came on record by cross-examination of P.W.No.2 – the prosecutrix.

6 For all reasons stated in forgoing paragraphs, I am of the opinion that liberty of the applicant which was granted to him by the learned trial Court during pendency of the trial needs to be restored during pendency of the appeal and as such, the order :

(i) The application is allowed.

- (ii) The substantive sentence of imprisonment imposed on the applicant is suspended and he is directed to be released on bail on executing PR bond of Rs.15,000/- with one surety in like amount during pendency of the appeal filed by him.
- (iii) As a condition of this order, the applicant/accused should not contact the minor female victim or her relatives as well as prosecution witnesses in any manner. During pendency of appeal he should not extend any threats, promises or inducements to them.

(A.M.BADAR J.)