

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.555 OF 2017

IN

CRIMINAL APPEAL NO.332 OF 2017

Dayaram Houshiram Chavhan ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

.....

Mr.Tejas Hilage, Advocate for the Applicant.

Mr.S.V.Gavand, 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 his appeal, which is already been admitted for final hearing by this Court. Though the applicant/accused was tried for offences punishable under Sections 363, 366, 365 and 376 of the Indian Penal Code ("IPC" for the sake of brevity) as well as under Sections 4, 7 and 8 of the Protection of Children from Sexual Offences Act, 2012 ("POCSO Act" for the sake of brevity), the learned trial Court convicted him of offences punishable under Sections 363, 365, 354 of the IPC and under Section 8 of the POCSO Act. For the offence punishable under Section 8 of the

POCSO Act, he has been awarded sentence of rigorous imprisonment for three years apart from payment of fine of Rs.1,000/- and in default to undergo further simple imprisonment for one month. For rest of the offences lesser sentences have been awarded and all sentences are directed to run concurrently. Therefore, it is not necessary to mention other sentences which are lesser in term.

2 Heard the learned Advocate appearing for the applicant/accused. He argued that though according to the prosecution case, the prosecutrix was 17 years and 9 months old at the time of incident in question, the FIR lodged by father of the victim shows that she was 19 years of age and it is also seen from evidence of the prosecution that prosecutrix had appeared for 12th Standard examination in the year 2013, which *prima facie* shows that she was more than 18 years of age at the time of alleged incident.

3 The learned Additional Public Prosecutor opposed the application by contending that the crime in question is serious and it is held to be proved by the Court below.

4 I have carefully considered the rival submissions and also perused the impugned Judgment and Order of conviction. The learned trial Court has categorically held that the charge for

committing the offence of rape or penetrative sexual assault is not proved by the prosecution. For other offences, small sentences are imposed and the maximum sentence is only of three years. As seen from the impugned Judgment and Order, the victim had joined company of the accused by going to railway station at Pune and her statement came to be recorded after three months, though she was available for recording her statement. Evidence regarding her age, *prima facie*, appears to be ambiguous. Hearing of the appeal will take its own time and if the relief, as claimed, is refused, then the appeal would render infructuous with passage of time 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 in the sum of Rs.15,000/- and on furnishing surety in the like amount.
- (iii) As a condition of this order, the applicant shall not contact the prosecutrix or her relatives in any manner and he should not extend threats, promises or inducements to them.

(A.M.BADAR J.)