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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

***CRIMINAL APPLICATION NO.1137 OF 2017
(FOR BAIL)***

***IN
CRIMINAL APPEAL NO.665 OF 2017***

***WITH
CRIMINAL APPLICATION NO.1138 OF 2017
(FOR SUSPENSION OF SENTENCE)***

***IN
CRIMINAL APPEAL NO.665 OF 2017***

Digambar Ramesh Gaikwad

...Applicant

Versus

The State of Maharashtra

...Respondent

Mr.S.M.Katkar i/b Ms.M.A.Devkar, for the Applicant

Mr.S.H.Yadav, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.

DATE : 4th AUGUST, 2017

P.C. :

1. Heard learned counsel for the parties.

2. By these applications, the applicant seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of the appeal.

3. The applicant vide Judgment and Order dated 11th July, 2017, passed by learned District Judge-8 and Additional Sessions Judge, Thane, in Special Case POCSO No.141 of 2015, has been convicted and sentenced as under:-

- for the offence punishable under Section 354 of the Indian Penal Code and under Section 7 r/w Section 8 of the Protection of Children from Sexual Offences Act, to suffer R.I for 3 years and to pay fine of Rs.1,000/- in default to suffer S.I. for 1 month.

4. Learned Counsel for the applicant states that the applicant had a good case on merits. He submitted that as far as evidence of using abusive & filthy language and threats allegedly given by the applicant are concerned, the learned Judge has observed in para 17, that such abusive words and threats were not given by the applicant and as such there is no evidence in this regard, against the applicant. He submits that in this

light of the matter, the evidence will also have to be scrutinized and appreciated. He further submitted that as far as the evidence of voluntarily causing hurt is concerned, admittedly, there is no medical evidence to show, that the victim's mother had sustained any injuries, allegedly at the hands of the applicant. He submitted that the applicant was on bail, pending trial and that he has not abused or misused the liberty granted to him.

5. Perused the papers. The applicant alongwith his brother were arraigned as accused in the case. Co-accused – Pawan Ramesh Gaikwad, brother of the applicant, has been acquitted of all the aforesaid offences. It appears that the incident took place during the immersion ceremony of Ma Durga, when the victim was proceeding towards the pandal. It is alleged that the applicant who was sitting on a chair outside the pandal, held the victim's hands and refused to leave her hand. It is further alleged that the victim's mother, who was behind, rescued her. It appears that thereafter, there was a scuffle. As far as the offences, punishable under Sections 323, 504 and 506 r/w 34 of the Indian Penal Code are concerned, the applicant has been acquitted of the said offences, considering the evidence

on record. The Appeal has been admitted by a separate order passed today and the same is not likely to come up for the hearing soon. It is not in dispute, that the applicant was on bail pending trial and that he has not abused or misused the liberty granted to him. The sentence awarded is a short term sentence.

6. Considering the aforesaid, the applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of his Appeal, on the following terms and conditions :

ORDER

(i) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.10,000/- with one or two sureties in the like amount;

(ii) The Applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the trial Court as well as to the concerned Police Station, in writing.

7. The Applications are allowed in the aforesaid terms and are accordingly disposed of.
8. All concerned to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)