

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

**CRIMINAL APPLICATION NO.1311 OF 2017
IN
CRIMINAL APPEAL NO.772 OF 2017**

Javed Ajij Shaikh ... **Applicant**

V/s.

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

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Mr.Arun Rajput i/b. Anjali Patil, Advocate for the Applicant.

Mr.A.D.Kamkhedkar, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 29th September 2017.

P.C. :

1 This is an application for suspension of sentence and releasing the applicant on bail during pendency of the appeal filed by him. Though the applicant/accused was charged for offences punishable under Section 376 of the Indian Penal Code and under Section 4 of the Protection of Children from Sexual Offences Act (hereinafter referred to as "POCSO" for the sake of brevity), he has been acquitted of those offences by the learned trial Court. He, however, is convicted of offences punishable under Section 8 read with Section 10 of the POCSO and is sentenced to suffer simple imprisonment for five years apart from direction to pay fine of Rs.1,000/- and in default to undergo further simple imprisonment for six months.

2 Heard the learned Advocate appearing for the applicant/accused. He argued that the substantive sentence of five years has been imposed on the applicant/accused and sentence awarded is simple. He drew my attention to the evidence of Dr.Vijay Ghorpade to demonstrate that there was no repeated sexual assault as alleged by the prosecution.

3 The learned Additional Public Prosecutor opposed the application by contending that crime in question is serious and evidence on record shows that there was repeated sexual assault on the victim of the crime in question.

4 It is not disputed by the learned Additional Public Prosecutor that the victim is 17 and half years of the age. The applicant/accused has already acquitted of offences punishable under Sections 376 and 363 of the IPC as well as under Section 4 of the POCSO. He is found to be guilty of aggravated sexual assault on two occasions and, therefore, Section 10 of the POCSO came to be invoked and accordingly, the applicant/accused is convicted and sentenced to suffer simple imprisonment for five years.

5 Considering the nature of offence proved against the applicant/accused as well as the fact that short sentence of five years is imposed on the applicant/accused, keeping in mind pendency of appeals before this Court and the likelihood that the

appeal filed by the applicant may not be heard in near future, the applicant deserves liberty. Therefore, 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 his executing P.R. Bond in the sum of Rs.15,000/- with one surety in like amount.
- (iii) As a condition of this Order, the applicant should not contact the alleged victim or her relatives in any manner. He should not indulge in commission of any offence in future.
- (iv) The application is disposed of accordingly.

(A.M.BADAR J.)