

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1458 OF 2016

IN

CRIMINAL APPEAL NO.739 OF 2016

HIRAJI RAJARAM BHISE

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA

)...RESPONDENT

Ms.Apeksha Vora, Advocate for the Applicant.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 1st SEPTEMBER 2017

P.C. :

1 This is an application for suspension of sentence and releasing the applicant / accused on bail during pendency of the appeal filed by him, which is also admitted for final hearing.

2 Heard Ms.Apeksha Vora, the learned advocate appointed by this court to represent the applicant / accused at the cost of the State, as well as the learned APP. The learned advocate

appearing for the applicant / accused vehemently argued that the applicant / accused is behind bars since 2014 and short sentence of five years is imposed on him. He has already undergone more than half of the sentence imposed on him and as the appeal is of the year 2016, there is no likelihood of hearing the appeal in near future. Therefore, she submits that as the applicant / accused is already acquitted from major offences such as offences punishable under Sections 3(c) read with 4 and 5(1)(m) read with 6 of the Protection of Children from Sexual Offences Act, 2012, as well as Section 377 of the IPC, the applicant / accused deserves liberty till disposal of his appeal.

3 The learned APP opposed the application by contending that the offence alleged against the applicant / accused and found to be proved is serious and as the applicant / accused was indulging in aggravated sexual assault on a child, the application deserves to be rejected.

4 I have carefully considered the rival submissions and also perused record and proceedings. The applicant / accused, upon considering evidence on record, and more particularly substantive evidence coupled with medical evidence adduced by the prosecution, came to be acquitted of major offences such as penetrative sexual assault, aggravated penetrative sexual assault as well as for the offence punishable under Section 377 of the IPC. Ultimately, he is found to be guilty of commission of aggravated sexual assault. It is found that he had touched the private part of a child below 12 years of age. The applicant / accused has already undergone major part of the sentence imposed on him as he was not on bail during trial. As the applicant / accused has undergone major part of sentence imposed on him and as he is already acquitted for offences of serious nature alleged against him, he deserves liberty as his appeal is not likely to be heard in near future. Therefore the order :

- i) The application is allowed.
- ii) Substantive sentence imposed upon the applicant / accused is suspended and he is directed to be released

on bail on his executing PR.Bond in the sum of Rs.15,000/- and on furnishing surety in like amount.

iii)As a condition of this order, the applicant / accused should not contact the prosecuting party or the victim child in any manner.

iv)The applicant / accused should not commit any offence while enjoying liberty under this order.

(A. M. BADAR, J.)