

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.23 OF 2018

IN

CRIMINAL APPEAL NO.1056 OF 2017

Dildar Ahmed Siddique ... **Applicant**
V/s.

The State of Maharashtra ... **Respondents**

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Ms.Prachita P. Vare I/b. Mr.Prakash V. Vare, Advocate for the Applicant.

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

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CORAM : A.M.BADAR J.

DATED : 24th JANUARY 2018.

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.

2 The applicant/accused is convicted of the offence punishable under Section 8 of the Protection of Children from Sexual Offences Act, 2012 as well as under Section 354 of the Indian Penal Code. He has been sentenced to suffer rigorous imprisonment for three years apart from imposition of fine of Rs.1,000/- for the offence punishable under Section 8 of the

POCSO Act. No separate sentence was imposed on him for the offence punishable under Section 354 of the Indian Penal Code. Apart from this, the applicant/accused is directed to pay compensation of Rs.20,000/- to the victim of the crime in question.

3 Heard the learned Advocate appearing for the applicant/accused at sufficient length of time. By drawing my attention to the evidence of prosecution witnesses, the learned Advocate for the applicant/accused contended that the entire case of the prosecution is suspect and nothing is proved against the present applicant. She argued that offence of sexual assault is not proved by the prosecution and for that purpose she drew my attention to the evidence of alleged victim of the crime in question. Comparing her evidence with the evidence of Investigating Officer, the learned Advocate submitted that the entire evidence of the minor female victim came on record by way of improvements and if these improvements are omitted from consideration, then there is nothing to infer that the applicant had committed sexual assault on the minor victim. Other evidence is also pointed out to demonstrate that the same is not consistent in material particulars.

4 The learned Additional Public Prosecutor opposed the application.

5 I have carefully considered the rival submissions and also perused the copies of depositions of prosecution witnesses as well as the impugned Judgment and Order of conviction and resultant sentence.

6 The applicant has deposited not only fine amount but also the compensation amount before the trial Court. The learned trial Court itself came to the conclusion that the minor female child has deposed something before the Court which is surfacing on record for the first time. The learned trial Court has ignored that part of the evidence of the alleged victim of the crime in question and in paragraph 34 of its judgment indicated that the act was done with sexual intent.

7 Short sentence of imprisonment is imposed on the applicant/accused which has already been suspended by the learned trial Court. The applicant was on bail during trial and there is nothing to infer that he has misused the same. Therefore, the Order :

- (i) The application is allowed.
- (ii) The substantive sentence of imprisonment imposed on the applicant/accused is suspended and he is directed to be released on bail in the sum of Rs.15,000/- and on furnishing surety in the like amount.

- (iii) As a condition of this Order, the applicant should not contact either the minor female child who is the alleged victim in the crime in question as well as other prosecution witnesses in any manner.
- (iv) The application is disposed of accordingly.

(A.M.BADAR J.)