

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.886 OF 2018

IN

CRIMINAL APPEAL NO.720 OF 2018

Santosh Harishchanddra Rahate ... **Applicant**

V/s.

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

Ms.Pracheta Rathod for the applicant.

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

CORAM : A.M.BADAR J.

DATED : 27th JUNE 2018.

P.C. :

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

2. The applicant has been convicted of an offence punishable under Section 8 of the Protection of Children from Sexual Offences Act and he is sentenced to suffer imprisonment for five years apart from imposition of fine and default sentence. He is also convicted of offence punishable under Section 506 of the Indian Penal Code for which he is sentenced to suffer rigorous imprisonment for one year. Substantive sentences are directed to run concurrently.

3. Heard the learned Advocate appearing for the applicant/accused. She drew my attention to the statement of the victim child recorded by the Police and recorded by the learned Metropolitan Magistrate. My attention is also drawn to the history given by the victim child to PW 3 Dr.Ankesh Sahitya. With this it is argued that the victim child has given different history at each occasion and her evidence is not consistent with the prosecution case. It is further argued that evidence of defence witnesses would show that mother of the alleged victim child was doing business of illicit liquor and was running gambling den. Because of protest of the applicant, he is falsely implicated in the crime in question at the instigation of the mother of the victim child. The learned Advocate further drew my attention to the cross-examination of mother of the victim child to show that she has accepted the fact that she was doing business of illicit liquor and Police used to visit her house.

4. The learned APP opposed the application by contending that the evidence of the victim child in such case is required to be considered by keeping in mind border probabilities of the prosecution case.

5. I have considered the rival submissions and also perused the material placed on record. Short sentence of five years is imposed on the applicant out of which he has already undergone actual sentence of three years and two months. The appeal filed by him is not likely to be listed for final hearing in the near future. Hence, the applicant can be released on bail by imposing some conditions and therefore the order;

:: 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 on his executing P.R. Bond in the sum of Rs.15,000/-and on furnishing one surety in the like amount.
- (iii) As a condition of this Order, the applicant/accused should not repeat commission of similar offence in future and on happening of any such event in future, the prosecution shall be entitled to get the liberty of the applicant/accused curtailed by getting this Order cancelled.
- (iv) As a condition of this Order, the applicant/accused should not contact either the alleged victim of the crime in question or witnesses examined by the prosecution in this case in any manner.

(A.M.BADAR J.)