

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.887 OF 2018

IN

CRIMINAL APPEAL NO.721 OF 2018

Santosh Harishchandra Rahate ... **Applicant**

V/s.

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

.....

Ms.Pracheta Rathod, Advocate for the Applicant.

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

....

CORAM : A.M.BADAR J.

DATED : 21st JUNE 2018.

P.C. :

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

2 The applicant has been convicted of the offence punishable under Section 8 of the Protection of Children from Sexual Offences Act and he has been sentenced to suffer rigorous imprisonment for five years apart from payment of fine of Rs.1,000/- and in default to undergo further simple imprisonment for 30 days.

3 Heard the learned Advocate appearing for the applicant/accused. She argued that out of substantive sentence of five years imposed on the applicant/accused, he has already undergone actual sentence of three years and two months apart from remission, if any, admissible to him. The learned Advocate further drew my attention to the FIR lodged by the grandmother of the alleged victim of the crime in question as well as her evidence, so also statements under Sections 161 and 164 of the victim/P.W.No.2 as well as her evidence. My attention is also drawn to the evidence of P.W.No.4 Dr.Ankesh. With this, it was argued that the evidence adduced by the prosecution is not consistent and several versions have accorded during the stage of investigation as well as the trial. It is also argued that with same evidence, the learned trial Judge acquitted the applicant/accused in another case of similar nature bearing Special Case No.306 of 2015 on the very same day. The learned Advocate further argued that evidence of the defence witness goes to show that the incident of false accusation triggered because of dispute of the family of the applicant with one Pushpa Baikar, who was dealing in the business of illicit liquor and running gambling den from her house.

4 The learned Additional Public Prosecutor opposed the application by contending that all improvements were ignored by the learned trial Court and admissible evidence was considered for convicting the applicant/accused.

5 Whether inconsistency and improvements made by the prosecution witnesses at different stages would amount to casting shadow of doubt on their evidence so as to jettison the prosecution case entirely will have to be considered at the stage of final hearing while appreciating the evidence of the prosecution witnesses. Suffice to state that the applicant/accused is sentenced to suffer rigorous imprisonment for five years and he has undergone actual sentence of three years and two months i.e. more than half of the period of total imprisonment imposed on him. The subject appeal is of the year 2018 and is not likely to be heard within a short period. The application, therefore, deserves to be allowed.

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.)