

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.897 OF 2018

IN

CRIMINAL APPEAL NO.732 OF 2018

Santosh Harishchandra 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 rigorous imprisonment for five years apart from imposition of fine and default sentence.

3. Heard the learned Advocate appearing for the applicant/accused. She pointed out that statement of the alleged victim child recorded by the

learned Metropolitan Magistrate under Section 164 of the Criminal Procedure Code and submitted that the victim child has stated to the the Metropolitan Magistrate that the uncle has caused her to sit on his lap. This former statement is then compared with substantive evidence before the Court in order to demonstrate that the alleged victim child has made to make material improvements in her version before the Court. It is argued that because of similar such improvements in another connected case, the applicant / accused was acquitted. With this, it is submitted that evidence of defence witnesses shows that entire episode of lodging several complaints against the present applicant took place because of dispute between family of the applicant and that of Pushpa Baikar who is neighbourer dealing in business of illicit liquor and running gambling den.

4. The learned APP opposed the application and contended that even if improvements are ignored, then also case of sexual assault is made out.

5. Be that as it may, the short sentence of five years is imposed on the applicant and he has already undergone substantive sentence of three years and two months excluding the remission, if any, to which the applicant may be entitled. Thus, the applicant has already undergone more than half of the sentence imposed on him. The appeal filed by him is not likely to be heard within a short period. The defence witness is vouching about the motive for false implication. In this view of the matter, the following 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.)