

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1161 OF 2018

IN

CRIMINAL APPEAL NO.997 OF 2018

Ahmed Mehandi Hasan Shaikh ... **Applicant**

V/s.

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

.....

Mr.Syed Asif Abbas Naqvi, Advocate for the Applicant.

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

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CORAM : A.M.BADAR J.

DATED : 23rd AUGUST 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 offences punishable under Sections 8 of the Protection of Children from Sexual Offences Act (hereinafter referred to as 'POCSO' for the sake of brevity) as well as under Section 363 of the Indian Penal Code. For the offence punishable under Section 8 of the POCSO, he is sentenced to suffer rigorous imprisonment for five years and

for the offence punishable under Section 363 of the Indian Penal Code, he is sentenced to suffer rigorous imprisonment for one year. Some fine is also imposed on the applicant/accused. Substantive sentences are directed to run concurrently.

3 Heard the learned Advocate appearing for the applicant. He argued that disbelieving evidence of the prosecution, the applicant/accused is already acquitted of the major offences punishable under Section 376(2) (i) of the Indian Penal Code and under Section 6 of the POCSO. Short sentence of imprisonment is imposed on the applicant/accused. He was on bail during pendency of the trial

4 The learned Additional Public Prosecutor opposed the application by contending that in fact, the prosecution has proved the offences punishable under Section 376 of the Indian Penal Code so also under Section 6 of the POCSO.

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

6 After due trial, the applicant/accused was found to be guilty of the offence of sexual assault on a female child. The learned trial Court disbelieved evidence of the prosecution so far as offence of rape and penetrative sexual assault is concerned.

7 Short sentence of imprisonment of five years is awarded on the applicant/accused. It is reported that the applicant/accused was on bail throughout the trial. It is not seen that he has misused his liberty in any manner. The appeal filed by the applicant/accused may not be heard within a short period of five years. As such, 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 of Rs.15,000/- and on furnishing surety in the like amount.
- (iii) As a condition of this Order, the applicant/accused should not contact the victim child or her relatives in any manner and he should not repeat commission of similar offence in any manner.
- (iv) Failure to abide by these conditions shall entail the prosecution to apply for cancellation of bail granted to the applicant/accused.
- (iv) The application is disposed of accordingly.

(A.M.BADAR J.)

Raju
Dattatraya
Gaikwad

Gaikwad RD

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