

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.1218 OF 2018
IN
CRIMINAL APPEAL NO.932 OF 2018**

Elgan Silvadar Fernandes
Age : 48 years, Occ.: Business
R/at Room No. 104, 'A' Wing,
Building No. 12, Abhilasha Building,
Chandivali, Powai (West),
Mumbai

.... Applicant

Vs.

The State of Maharashtra
(Through Parkasite Police Station)

.... Respondent

Mr. Samyak K. Gimekar for the Applicant.
Mr. Y.M. Nakhwa, APP for the State.

Coram : Smt. Sadhana S. Jadhav, J.

Date : 30th November 2018

P.C.:

1 Heard the respective counsel.

2 This is an application under Section 389 Code of Criminal
Procedure. The applicant herein is seeking suspension of substantive
sentence imposed upon him vide judgment and order dated 10th May

2018 in POCSO Special Case No.460 of 2014 by Special Judge under POCSO Act, Greater Bombay. The applicant is convicted for the offences punishable under Section 8 of the Protection of Children from Sexual Offences, Act, 2012 ("POCSO Act) and sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.2,000/-, in default to suffer simple imprisonment for two months and under Section 354(B) of the Indian Penal Code and sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.1,000, in default of payment of fine, he shall undergo simple imprisonment for thirty days. The learned Special Judge has also directed the applicant to pay compensation of Rs.25,000/- to the victim-girl as per Section 33(8) of the Protection of Children from Sexual Offences Act and if he fails to deposit the amount, he shall undergo simple imprisonment for six months and all the aforesaid sentences shall run concurrently.

3 Learned counsel for the applicant submits that the applicant was on bail during the pendency of the trial and has not committed breach of conditions imposed upon him. It is also

submitted that the applicant has been sentenced to a short term sentence and that there is no possibility of the appeal being finally heard in the near future.

4 In view of the judgment of the Hon'ble Apex Court in the case of **Kiran Kumar v/s. State of M.P. 2001 AIR SCW 5130**, the substantive sentence imposed upon the applicant deserves to be suspended during the pendency of the appeal. In view of above, taking into consideration that the sentence imposed upon the applicant is a short term sentence, it would be a fit case for suspension of the substantive sentence. However, it is made clear that the suspension of substantive sentence would not amount to suspension of conviction. Hence, the following order.

ORDER

- i) The application is allowed and stands disposed of.
- ii) The substantive sentence imposed upon the applicant vide judgment and order dated 10th May 2018 is hereby suspended.
- iii) The applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs.15,000/- with one or more solvent sureties in the

like amount.

iv) The applicant shall execute the bail bonds within two weeks from today, Upon failure, the present order shall stand recalled by itself.

v) The applicant shall report to the Special Court (POCSO), Greater Mumbai once in every three months on the date assigned by the Special Judge.

vi) Upon failure to attend any two consecutive dates, the Special Court shall report the same to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

(*Smt. Sadhana S. Jadhav, J*)