

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

**CRIMINAL APPLICATION NO.1793 OF 2018
IN
CRIMINAL APPEAL NO.1269 OF 2018**

Mohammad Badruddin Junagadwala Applicant

Vs.

The State of Maharashtra Respondent

Ms. Meetali Mendhe for the Applicant.

Mr. Y.M. Nakhwa, APP for the State.

Coram : Smt. Sadhana S. Jadhav, J.

Date : 21st November, 2018

P.C.:

1 Heard.

2 This is an application under Section 389 Code of Criminal Procedure. The applicant herein is convicted by Special Judge (POCSO Act), Greater Bombay vide judgment and order dated 29th September 2018 for the offence punishable under Section 12 of the Protection of Children from Sexual Offences Act, 2012 and he is sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.1000/-, in default of payment of fine, to suffer simple

imprisonment for one month. The applicant is also directed to pay the amount of compensation to the victim-girl to the tune of Rs.15,000/-.

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 any conditions imposed upon him. The applicant has deposited the amount of fine as well as the compensation amount in the Court within the stipulated time. It is also submitted that the applicant has been sentenced to a short term sentence and that there is no likelihood of the appeal being finally heard in 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. 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.
- ii) The substantive sentence imposed upon the applicant vide judgment and order dated 29th September 2018 is hereby suspended.
- iii) The applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs.25,000/- with one or more solvent sureties in the like amount.
- iv) The applicant shall mark his presence before the Special Court (POCSO), Greater Bombay once in six months on the date assigned by the Special Judge.
- v) 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.
- vi) The application is allowed in above terms and stands disposed of.

(Smt. Sadhana S. Jadhav, J)