

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1851 OF 2018
IN
CRIMINAL APPEAL NO. 1320 OF 2018

1 Ashish Rajaram Gupta.
2 Nayan Ashok Devadiga.
3 Sachin Bindrishriprasad Gupta.
4 Sanjay Ashvin Jadhav. ..Applicants.
V/s.
The State of Maharashtra. ..Respondent.
Mr. Prakash V. Vare, advocate applicants.
Mr. S.S. Pednekar, APP for respondent-State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : DECEMBER 7, 2018.

P. C. :

1 Heard the learned Counsel for the applicants and the learned
APP for State.

2 This is an application under section 389 of the Code of
Criminal Procedure, 1908. The applicants herein are convicted for the
offence punishable under section 354 read with section 34 of the Indian
Penal Code and sentenced to suffer R.I. for 2 years and fine of Rs. 500/-
each I.d. to suffer S.I. for 7 days. The applicants are convicted for
offence punishable under section 363 and 366A read with section 34 of

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the Indian Penal Code and sentenced to suffer R.I. for 2 years and fine of Rs. 500/- each I.d. to suffer S.I. for 7 days. The applicants are also convicted for offence punishable under section 8 read with section 17 of the POCSO Act and sentenced to suffer R.I. for 3 years and to pay fine of Rs. 1,000/- each I.d. to suffer S.I. for 15 days. The applicants are also convicted for offence punishable under section 12 read with 17 of POCSO Act and sentenced to suffer R.I. for one year and to pay fine of Rs. 500/- each I.d. to suffer S.I. for 15 days by Special Judge under POCSO Act, Gr. Mumbai in POCSO Case No. 804 of 2013. All the substantive sentences shall run concurrently.

3 The learned Counsel for the applicants submits that the sentence imposed upon the applicants is a short term sentence. The original accused No. 6 who is sentenced to 10 years R.I. has been granted bail during the pendency of the appeal by the coordinate bench (Coram: A.M. Badar, J). The present applicants were on bail during the pendency of the trial and have not committed breach of any conditions imposed upon them. In view of the Judgment of the Hon'ble Apex Court in the case, Kiran Kumar v/s. State of M.P. 2001 AIR SCW 5130, the applicants deserve extension of same relief during the pendency of the appeal. However, it is made clear that suspension of substantive sentence shall not be construed as suspension of conviction.

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4 Hence following order is passed :

ORDER

(i) This application is allowed.

(ii) The substantive sentence imposed upon the applicants vide Judgment and Order dated 21/08/2018 by the Special Judge, Under the POCSO Act, Gr. Mumbai is hereby suspended. The applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 30,000/- each with one or more solvent sureties in the like amount.

(iii) The applicants shall mark their presence before the Special Judge, under POCSO Act, Gr. Mumbai once in 6 months on the date assigned by the learned Special Judge under POCSO Act, Gr. Mumbai. Upon failure to attend any two consecutive dates, the Special Court under POCSO Act, Gr. Mumbai, shall report the same to the High Court and the prosecution is at liberty to file application for cancellation of bail.

5 The application is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]