

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.1626 OF 2017
IN
CRIMINAL APPEAL NO.995 OF 2017**

Hasmat Malik Kallu Shaikh ... **Applicant**
V/s.

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

.....

Mr.Kuldeep S. Patil, Advocate for the Applicant.

Mr.Prashant Jadhav, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 24th JANUARY 2018.

P.C. :

1 This is an application for suspension of sentence and releasing the applicant/accused on bail during pendency of appeal filed by him.

2 The applicant/accused has been convicted of offence punishable under Section 354 of the Indian Penal Code and Section 10 of the Protection of the Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act' for the sake of brevity). For the offence punishable under Section 10 of the POCSO Act, he has been sentenced to suffer rigorous

imprisonment for five years apart from imposition of fine or Rs.10,000/-. On another count, he is sentenced to suffer rigorous imprisonment for one year. The substantive sentences are directed to run concurrently.

3 Heard the learned Advocate appearing for the applicant/accused. By pointing paragraph 26 of the impugned Judgment and Order, the learned Advocate argued that the applicant/accused was behind bars for fifteen months as an under-trial prisoner. By drawing my attention to clause (6) of the operative portion of impugned Order, the learned Advocate for the applicant/accused argued that subsequently, the applicant was released on bail and during pendency of the trial, he had not misused his liberty. It is further argued that short sentence of imprisonment imposed on the applicant/accused and the major part of it had undergone by the applicant/accused.

4 The learned Additional Public Prosecutor opposed the application by contending that the crime in question is serious and P.W.No.1/alleged victim of the crime in question has pointed the complicity of the applicant in the crime in question.

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

6 It is clear from the impugned Judgment and Order that the applicant has undergone sentence of about fifteen months as an under-trial prisoner and then he was released on bail. The record does not indicate that during trial, the applicant/accused had misused his liberty. Allegations against him are in respect of the sexual assault and as the victim was below twelve years of age, he was convicted for the offence punishable under Section 10 of the POCSO Act. Considering the remaining part of the sentence which is yet to be undergone by the applicant/accused as well as pendency of appeal before this Court, the instant appeal may not be heard within short period of about three years and half years. The applicant had not misused his liberty while on the bail. Hence, the 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 in the sum 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 minor female victim of the crime in question as well as her relatives and prosecution witnesses in any manner.

(iv) The application is disposed of accordingly.

(A.M.BADAR J.)