

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

**CRIMINAL APPLICATION NO.1871 OF 2018
IN
CRIMINAL APPEAL NO.1353 OF 2018**

Devendra Sukhai Gupta
Age : 21 years,
Permanently residing at Bechan
Mistry Chawl, Room No. 5,
Behind Saibaba Temple, Kajuwadi,
Wagle Estate, Thane
(Presently lodged in Nasik Central
Prison)

.... Applicant

Vs.

The State of Maharashtra
(Through Wagle Estate Police Station,
Thane in CR No. 258/2015)

.... Respondent

Mr. Amarnath B. Gupta for the Applicant.
Mr. S.S. Pednekar, APP for the State.

Coram : Smt. Sadhana S. Jadhav, J.

Date : 12th December 2018

P.C.:

- 1 Heard the respective counsel.
- 2 This is an application under Section 389 Code of Criminal Procedure. The applicant herein seeking suspension of substantive

sentence imposed upon him by the District Judge-4 and Additional Sessions Judge, Thane vide judgment and order dated 12th September 2018 in Special Case (POCSO) No.10 of 2016.

3 Perused the records and proceedings. More particularly the evidence of the victim. According to the victim, her date of birth is 23rd August 2000. The date of incident is 2nd October 2015. She has deposed before the Court that the applicant herein resides just in front of her house. There were cordial relations between both the families. That she had exchanged messages with him. She used to give missed calls to him. It is also admitted that in one of the message, she had expressed her love for the applicant by sending a text "I love you". She was sent to her native place by her parents for 15 days and during that period, she used to regularly converse with the applicant. It is also admitted that after her mother learnt about the friendship with the victim, her mother used to accompany her to the College. The applicant used to recharge her cellphone. There is material to show that she had visited Shubham Lodge alongwith the applicant and had also signed the register. It is also admitted

that the applicant as well as the victim are from Uttar Pradesh and that her paternal uncle is having a criminal record.

4 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. 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.

5 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 12th 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 report to the Court of District Judge-4 and Additional Sessions Judge, Thane, once in six months on the date assigned by the learned Sessions Judge.
- v) Upon failure to attend any two consecutive dates, the Sessions 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)