

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL APPLICATION NO. 1889 OF 2018**  
**IN**  
**CRIMINAL APPEAL NO. 1404 OF 2018**

Vidyasagar @ Samadhan Prakash Patil.

..Applicant.

V/s.

State of Maharashtra.

..Respondent.

Mr. Pratik R. Kalantri, advocate for applicant/appellant.

Mr. S.S. Pednekar, APP for State.

**CORAM : SMT. SADHANA S. JADHAV,J.**

**DATE : NOVEMBER 28, 2018.**

**P. C. :**

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

2            This is an application under section 389 of the Code of Criminal Procedure, 1973 seeking suspension of substantive sentence imposed upon him vide Judgment and Order dated 3/11/2018 by Sessions Judge, Nashik in Sessions Case No. 205 of 2018, by which the applicant has been convicted of the offences punishable under sections 354, 354B of the Indian Penal Code, 1860 and under section 8, 10, 12 of the Protection of Children from Sexual Offences Act, 2012 and sentenced to suffer rigorous imprisonment for 5 years and to pay fine of

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Rs. 500/- in default to suffer R.I. for 3 months on each count. The sentences are to run concurrently.

3 Perused the notes of evidence, more particularly, the substantive evidence of the victim P.W. 4. The applicant was residing in the same building as that of the victim as a tenant. It is the case of the victim that on 1/4/2018 while she was playing with her friend Shrushti in the staircase, the applicant pressed the neck, touched her vagina. The act was noticed by her brother Dhruv, who has been examined as P.W. 3.

4 The learned Counsel for the Applicant has drawn attention of this Court to the inherent inconsistency in the substantive evidence of P.W. 3 and P.W.4.. Since the victim is 5 years old, the accused/appellant could not have been convicted under section 354 and 354B of the Indian Penal Code. The applicant is working on daily wages and therefore, the act committed by the applicant is not covered under section 9 of the Protection of Children from Sexual Offences Act, 2012. The act of the accused would fall under section 7 and 8 of the Protection of Children from Sexual Offences Act, 2012.

5 The learned Counsel submits that taking into consideration the nature of allegations, the applicant was enlarged on bail during the

pendency of the trial after filing of the charge-sheet. The applicant was arrested on 1/4/2018 and was released on bail after filing of the charge-sheet and at present he has been taken into custody on 3/11/2018.

6           The learned Counsel for the applicant submits that in the eventuality that he is enlarged on bail, he would not reside at Nashik and would return to his home town i.e. Jalgaon.

7           The sentence imposed upon the applicant is a short term sentence. 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 applicant would be entitled to be enlarged on bail as this Court is hearing appeal of the year 2012 and 2014, where the accused are in jail. In view of this, the application deserves to be allowed. Hence, following order is passed :

### **ORDER**

- (i)           The application is allowed.
- (ii)          The substantive sentence imposed upon the applicant vide Judgment and Order dated 3/11/2018 by Session Judge, Nashik in Sessions Case No. 205 of 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

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amount.

(iv) The applicant shall report to Session Court, Nashik once in 6 months on the date assigned by the concerned Court. Upon failure to attend the concerned court on two consecutive dates, the Sessions Court, Nashik shall report the same to the High Court and the prosecution is at liberty to file application for cancellation of bail.

8 The application is disposed of accordingly.

**[SMT. SADHANA S. JADHAV, J.]**