

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1896 OF 2018
IN
CRIMINAL APPEAL NO. 1410 OF 2018

Sadik Dagadu Hawaldar.

..Applicant.

V/s.

The State of Maharashtra.

..Respondent.

Mr. Sanjay Shivajirao Patil, advocate for applicant.

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

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : NOVEMBER 22, 2018.

P. C. :

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

2 This is an application under section 389 of the Code of Criminal Procedure, 1908. The applicant herein is convicted for offence punishable under section 354(D)(1)(i), 452 of the Indian Penal Code and under section 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 by the Additional Sessions Judge, Pune in Special POCSO Sessions Case No. 461 of 2016 vide Judgment and Order dated 26.10.2018 and is sentenced to suffer R.I. for one year and fine of Rs. 1000/- on each count for offence punishable under section 354(D)(1)(i) and 452 of the Indian Penal Code and R.I. for 3 years for offence punishable under section 8 of the Protection of Children from Sexual Offences Act, 2012 and fine of Rs. 2,000/- i.d. to suffer S.I. for 3 months and R.I. for six months and to pay fine of Rs. 1000/- I.d. to suffer S.I. for

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15 days for offence punishable under section 12 of the Protection of Children from Sexual Offences Act, 2012.

3 The applicant was in custody from 13/10/2016 to 17/12/2016 and thereafter, he was enlarged on bail. The learned Counsel for the applicant submits that while on bail the applicant has not committed breach of any conditions imposed upon him. It is also submitted that the applicant has deposited fine amount and that his sentence has been suspended by the Special Court for one month in order to enable him to file an appeal.

4 The sentence imposed upon the applicant is a short term sentence. As on today, this Court is hearing custody appeals of the year 2012 and 2014 and therefore, it may not be possible to take up the matter for final hearing in the near future and therefore, the substantive sentence imposed upon the applicant deserves to be suspended. 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 applicant deserves to be enlarged on bail during pendency of the appeal in the above circumstances.

5 It is made clear that the suspension of substantive sentences shall not be construed as suspension of conviction.

6 Hence, following order is passed.

ORDER

(i) The application is allowed.

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(ii) The substantive sentence imposed upon the applicant vide Judgment and Order dated 26th October, 2018 passed by the Additional Sessions Judge, Pune in Special POCSO Sessions Case No. 461 of 2016 is hereby suspended and he be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 15,000/- and one or more solvent sureties in the like amount.

(iii) The applicant shall report to the Court of Additional Sessions Judge, Pune(Special Court under POCSO) once in 6 months on the date scheduled dated as given by the Sessions Court.

(iv) Upon failure to attend any two consecutive dates, the Special Court shall make a report to the High Court and the prosecution would be at liberty to seek cancellation of bail.

7 The application is disposed of in the above terms.

[SMT. SADHANA S. JADHAV, J.]