

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

**CRIMINAL APPLICATION NO.1946 OF 2018
IN
CRIMINAL APPEAL NO.1440 OF 2018**

Somnath Mahadev Ghuge

Age : 36 years, Occ.: Business,
R/at Room No. 230, Patra Chawl,
Sindhi Camp, Sable Nagar,
Kurla (East), Mumbai – 24

.... Applicant

Vs.

The State of Maharashtra
(Through Nehru Nagar Police Station)

.... Respondent

Mr. Raviraj R. Paramane for the Applicant.
Mr. S.S. Pednekar, APP for the State.

Coram : Smt. Sadhana S. Jadhav, J.

Date : 30th November 2018

P.C.:

1 Heard the respective counsel.

2 This is an application under Section 389 Code of Criminal
Procedure. The applicant herein is convicted for the offence
punishable under Section 354-A of Indian Penal Code and sentenced
to suffer rigorous imprisonment for three years and to pay a fine of

Rs.1,000/-, in default, to suffer rigorous imprisonment for one month and under Section 8 of Protection of Children from Sexual Offences, Act, 2012 (“POCSO Act) and sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.1,000/-, in default, to suffer further rigorous imprisonment for one month by the Special Judge (POCSO Act), City Civil and Sessions Court, Greater Bombay vide order dated 30th October 2018 in POCSO Special Case No. 400 of 2015.

3 Learned counsel for the applicant submits that the applicant was on bail during the pendency of the trial and has not committed breach of conditions imposed upon him. Pursuant to the sentence imposed upon the applicant, the same is suspended by the trial Court in order to enable the appellant to approach this Court. 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.

4 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 30th October 2018 by the Special Judge (POCSO Act), City Civil and Sessions Court, Greater Bombay 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 Special Court (POSCO Act), City Civil & Sessions Court, Greater Bombay once in six months on the date assigned by the Special Judge.

v) Upon failure to attend any two consecutive dates, the Special Court (POCSO) 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*)