

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

**CRIMINAL APPLICATION NO.1949 OF 2018
IN
CRIMINAL APPEAL NO.1442 OF 2018**

Shri. Hari Vasudev Bhoinkar Applicant
Age : 36 years,
R/o Bharadkhol, Tal. Shriwardhan,
District Raigad

Vs.

The State of Maharashtra Respondent
(Through Dighi Sagari Police Station)

Mr. Tejesh Dande I/by Tejesh Dande & Associates for the Applicant.
Mr. Y.M. Nakhwa, 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 offences punishable under Sections 354-A of Indian Penal Code and sentenced to suffer rigorous imprisonment for three years and under

Section 7 read with 8 of the 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.10,000/-, in default, to suffer further rigorous imprisonment for one month by the Additional Sessions Judge and Judge, Special Court, Mangaon, District Raigad vide order dated 31st October 2018 in Special POCSO Case No. 10 of 2014.

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 31st October 2018 by the Additional Sessions Judge and Judge, Special Court, Mangaon, District Raigad 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 Mangaon, District Raigad once in six months on the date assigned by the Special Judge.

v) Upon failure to attend any two consecutive dates, the Special 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)