

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO. 169 OF 2019
IN
CRIMINAL APPEAL NO. 33 OF 2019

SUBHASH PAWASKAR., ... Applicant

Versus

STATE, REP. BY THE P.P., ... Respondent

Mr. Arun De Sa, Advocate for the applicant.
Mr. S. R. Rivankar, Public Prosecutor for the respondent.

Coram:- PRITHVIRAJ K. CHAVAN, J.

Date:- 27th June 2019

P.C.

By this application under Section 389 of Cr.P.C. the applicant has prayed for suspension of sentence pending the appeal. The applicant came to be convicted by the President Children's Court, Goa by Judgment and order dated 3.5.2019 in Special case No.58/2014 for an offence punishable under Section 323 of IPC. He is sentenced to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for 15 days. For the offence punishable under Section 8(2) of the Goa Children's Act 2003 he is sentenced to undergo simple imprisonment for one day inter alia fine of Rs.1,00,000/- in default to undergo simple imprisonment for one year.

2. Mr. D'Sa learned Counsel for the applicant states that he has good case on merits and there are chances of acquittal.

Indisputably, the applicant was on bail during the course of trial and therefore, in view of the ratio laid down in the case of Satyendra Kumar Mehra Vs. State of Jharkhand, (2018) 15 SCC 139 not only substantive sentence but even the amount of fine which is part of sentence can be suspended under Section 389 of Cr.P.C., as according to the Supreme Court there are no fetters on the power of the Appellate Court while exercising jurisdiction under Section 389 of Cr.P.C. However, learned Counsel for the applicant undertakes to deposit 25% of the fine amount in the Children's Court. Statement is accepted. The applicant shall deposit 25% of the fine amount in the Children's Court within three weeks from today.

3. Substantive sentence as well sentence of fine, as stated herein above, is suspended, on applicant furnishing a personal bond of Rs.10,000/- with one surety in the like amount to the satisfaction of the Children's Court.

4. Application stands disposed of.

PRITHVIRAJ K. CHAVAN, J.