

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.28 OF 2019
IN
CRIMINAL APPEAL NO.25 OF 2019**

Hamida Anwar Ansari

...Applicant

V/s.

The State of Maharashtra

...Respondent

Mr. Sunil S. Sabhadinde, Advocate for the Applicant.

Ms. P.N. Dabholkar, APP for the Respondent/State.

CORAM : A.M.BADAR J.

DATED : 27th FEBRUARY 2019

P.C. :

1. This is an application for suspension of sentence and releasing the applicant/accused No.5 on bail during pendency of the appeal filed by her. She is convicted of the offences punishable under Section 354 read with Section 109 of the Indian Penal Code as well as under Section 3(3) punishable under Section 3(2) of the Maharashtra Prevention and Eradication of Human Sacrifice and Other Inhuman Evil and Aghori Practices and

Black Magic Act, 2013. On both counts, she is sentenced to suffer rigorous imprisonment for five years apart from direction to pay fine of Rs.5,000/- and in default, to undergo rigorous imprisonment for one month. Perusal of the impugned judgment further shows that though the learned trial Court has arrived at the finding that the applicant/accused No.5 has committed the offence punishable under Section 7 read with Section 17 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the POCSO Act for the sake of brevity) with a reasoning that the applicant/accused No.5 is convicted under the provisions of the Indian Penal Code, she is not liable for conviction under the POCSO Act, the learned trial Court has not convicted her on that count. The prosecuting agency is competent to look after this aspect of the matter.

2. Heard the learned counsel appearing for the applicant/accused No.5. He argued that the applicant/accused No.5 is the grandmother of the victim female child. There is no iota of evidence against the applicant/accused No.5 for offence held to be proved against her. The entire evidence against the

applicant/accused No.5 is coming on record by way of omission and these improvements being material, needs to be ignored from consideration.

3. The learned Additional Public Prosecutor opposed the application by contending that the victim female child has specifically deposed about instigation by the applicant/accused No.5 to her by encouraging her to join company of a so called Godman.

4. I have considered the submissions so advanced and perused the material placed on record.

5. The victim female child has deposed that on 1st May 2015 she left Mumbai for Delhi on the pretext of joining marriage ceremony, but she was taken to one alleged Godman by the applicant/accused No.5 as well as co-accused. She further alleged that the applicant/accused No.5 had tried to convince her to maintain physical relations with alleged Godman so as to earn money. *Prima facie* it is seen that evidence on this aspect is coming by way of omission and in such, was not the case of prosecution.

6. During pendency of the trial, the applicant/accused No.5 was on bail. In this view of the matter, the following order:

ORDER

- (i) The application is allowed.
- (ii) The substantive sentence of imprisonment imposed on the applicant/accused No.5 is suspended and she is directed to be released on bail on her executing P. R. Bond of Rs.15,000/- and on furnishing surety in the like amount.
- (iii) As a condition of this order, the applicant/accused No.5 should not indulge in repetition of similar offence in future.
- (iv) The application is disposed of accordingly.

(A.M.BADAR J.)