

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

**CRIMINAL APPEAL NO.692 OF 2019
ALONGWITH
CRIMINAL APPLICATION NO.737 OF 2019**

Shahrukh Majjid Mahadkar

.... Appellant/
Applicant

Vs.

1. The State of Maharashtra

2. Mrs. Pravina @ Tai Prakash Fulare

.... Respondents

Ms. Pooja Sejpal I/by Mr. Nitin Sejpal for the appellant/applicant.

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

Coram : Smt. Sadhana S. Jadhav, J.

Date : 2nd May 2019

P.C.:

1 Heard the respective counsel.

2 Appeal admit.

3 The above application is filed under Section 389 Code of Criminal Procedure seeking suspension of substantive sentence imposed upon the appellant/applicant. The applicant herein is convicted by the Judge, Special Court, Mangaon, District Raigad, vide judgment and order dated 18th April 2019 in Special (POCSO) Case No. 39 of 2015, for

the offences punishable under Sections 354-D (1)(i) of the Indian Penal Code and under Section 11 read with 12 of the Protection of Children from Sexual Offences Act. The applicant is sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.5,000/-, in default to suffer rigorous imprisonment for three months for the offence under Section 11 read with 12 of the Protection of Children from Sexual Offences Act. Since the applicant is sentenced for the above-said offence of POCSO Act, no separate sentence is awarded for the offence punishable under Sections 354-D (1)(i) of the Indian Penal Code.

4 Learned counsel for the applicant submits that at the time of incident, the prosecutrix was 16 years old, whereas the applicant was hardly 19 years old. He was in love with her and therefore had gone to introduce himself to her and expressed his love for her at the bus stand. That on 10th October 2015, he was expecting response from her and therefore had followed her. Thereafter she lodged a report in the police station and on the basis of which the applicant was arrested.

5 The victim has admitted in the cross-examination that although the applicant/accused was on bail during trial, after initiating

the prosecution, he had never contacted her or had stalked her. The sentence imposed upon the applicant is a short term sentence and that there is no possibility of the appeal being finally heard in the near future and hence the applicant would be entitled to the same relief during pendency of the appeal. Hence, the following order.

ORDER

- i) The application is allowed.
- ii) The substantive sentence imposed upon the applicant vide judgment and order dated 18th April 2019 is hereby suspended.
- iii) The applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs.20,000/- with one or more solvent sureties in the like amount.
- iv) The applicant shall mark his presence before the Judge, 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 make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

Parties to act on authenticated copy of this order.

(Smt. Sadhana S. Jadhav, J)