

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 895 OF 2019
IN
CRIMINAL APPEAL NO. 802 OF 2019

Ankush Ram Shitole

...Appellant

v/s.

The State of Maharashtra and Anr.

..Respondents

Mr. Kuldeep U. Nikam for appellant/applicant.

Mr. S.S. Hulke-APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : 10th JUNE, 2019.

P.C.

1. Heard.
2. This is an application filed under Section 389 of Cr.P.C. The applicant herein is seeking suspension of substantive sentence, during pendency of the appeal, imposed upon the applicant by the learned District Judge-2 and Additional Sessions Judge/Special Judge, Sangli in Special Special (POCSO) Case No. 243 of 2015 vide judgment and order dated 10th May 2019. The applicant herein is convicted for the offence punishable under sections 354 and Section 354 (A) (1) (I) of Indian Penal Code and Section 11 of the Protection of Children from Sexual Offences Act and he is sentenced to suffer R.I. for one year and to pay fine of Rs. 1000/- (Rupees one thousand only), in default, to suffer R.I. for three months. In fact looking at the nature of the allegations by the victim, the appellant

opt to have been convicted for an offence punishable under Sections 7 and 8 of the Protection of Children from Sexual Offences Act. Although the charge-sheet was framed under sections 7 and 8 of the Protection of Children from Sexual Offences Act. It appears that the learned Sessions Judge has acquitted the accused of the offence punishable under Section 7 and 8 of the said act.

3. In any case, the punishment contemplated for Sections 7 and 8 as well as 11 and 13 are *pari materia* the same. The sentence contemplated for Section 7 and 8 is for a term which shall not be less than 3 years but it may extend to 5 years. Section 12 contemplates the punishment which may extend to 3 years to 5 years.

4. There is no appeal against acquittal of the appellant for the offence punishable under Section 7 and 8 of Protection of Children from Sexual Offences Act and in view of this the applicant deserves to be enlarged on bail. Hence, the following order:-

Order

- i) The Criminal Application is allowed.
- ii) The substantive sentence imposed upon the applicant vide judgment and order dated 10th May 2019 in Special Case (POCSO) 243 of 2015 is hereby suspended.
- iii) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 20,000/- and one or more solvent sureties in the like amount.

- iv) The applicant shall cause his presence before the DJ-2 and Additional Sessions Judge, Sangli, once in six months on the date assigned by the learned Additional Sessions Judge.
- v) Upon failure to attend any two consecutive dates, the learned Special Judge shall make report to the High Court and the prosecution would be at liberty to seek cancellation of bail.
- vi) The appellant shall not reside within the jurisdiction of Dindives, Malegaon Road, Miraj, Dist:Sangli for a period of one year.
- vii) The application stands disposed of.

Parties to act on an authenticated copy of this order.

(SMT. SADHANA S. JADHAV, J)