

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

**CRIMINAL APPLICATION NO. 1150 OF 2019
IN
CRIMINAL APPEAL NO. 1086 OF 2019**

Aatiq @ Imran Hasan Hanif Shaikh ... Appellant/Applicant
V/s.
The State of Maharashtra and Anr. ... Respondents

Mr. Faisal F. Shaikh for the applicant/appellant.
Mr. S.S. Pednekar – APP for the State.

**CORAM : SMT. SADHANA S. JADHAV, J
DATED : 21ST AUGUST, 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 imposed upon the applicant by the Special Judge (POCSO Act) and Additional Sessions Judge, Thane in Special Case No. 39 of 2013, vide judgment and order dated 20th April 2019, thereby convicting the applicant for the offences punishable under Sections 363 and 366-A of Indian Penal Code and sentencing him to suffer rigorous imprisonment for four years and to pay a fine of Rs. 5000/-, in default, he shall suffer simple imprisonment for six months. The applicant has been acquitted for the offence punishable under section 376 of Indian Penal Code and under Section 4 of the Protection of Children from Sexual Offences Act, 2012

3. Perused the substantive evidence of the victim. In her deposition before the Court she has admitted that she was acquainted with the applicant two months prior to alleged incident. She has also admitted that she used to talk with him on the Cellphone. He had gifted her Cellphone. He had given a Cellphone along with Sim-card. That, on 17th May 2013, according to her, she had obliged the applicant by accompanying him. He had proposed for marriage with her and therefore, he took her to the workshop near C.T. Hospital. She was in his company for the whole night. There was sexual relation between the applicant and the prosecutrix. In the meanwhile, father of the victim had lodged a report against unknown person for the offence under Section 363 of Indian Penal Code.

4. The police had traced the prosecutrix in company of the applicant at the house of her friend. In fact, when the applicant and the prosecutrix went to the house of her friend Meena, the friend had informed her that her father had come to her house in search of her. She had not informed her parents that she was going to the house of her friend. It is in these circumstances, the appellant is acquitted under section 376 of Indian Penal Code and convicted for the offence punishable under Section 363 and 366-A.

5. *Prima facie* the evidence of the prosecutrix does not show that the applicant had coerced her to accompany him. In view of this, the applicant who was on bail during the pendency of the trial deserves the extension of the same relief during the pendency of the appeal. Hence, the following order:-

ORDER

- i) The Criminal Application is allowed.
- ii) The substantive sentence imposed upon the applicant vide judgment and order dated 20th April 2019 by the Special Judge (POCSO Act) and Additional Sessions Judge, Thane is hereby suspended.
- iii) The applicant be enlarged on bail on furnishing P.R. bonds in the sum of Rs.20,000/- (Rupees Twenty Thousand Only) and one or more sureties in the like amount.
- iv) The applicant shall cause his presence before the learned Special Judge (POCSO Act) and Additional Sessions Judge, Thane once in six months on the date assigned by the learned Special Judge (POCSO Act) and Additional Sessions Judge, Thane.
- v) Upon failure to attend any two consecutive dates, the the learned Special Judge (POCSO Act) and Additional Sessions Judge, Thane shall make report to the High Court and the prosecution would be at liberty to seek cancellation of bail.
- vi) The application stands disposed of.

6. Parties to act on an authenticated copy of this order.

(SMT. SADHANA S. JADHAV, J)