

BDP-SPS

Bharat
D. Pandit

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 31 OF 2019
IN
CRIMINAL APPEAL NO.73 OF 2019**

Nitin Mohan Chavan	 Applicant.
V/s	
The State of Maharashtra	 Respondent.

**ALONGWITH
CRIMINAL APPLICATION NO.1607 OF 2018
IN
CRIMINAL APPEAL NO.1008 OF 2015**

Ketan Ashok Sonawane	 Applicant.
V/s	
The State of Maharashtra.	 Respondent.

Mr. Aniket Vagal for the Applicant in APPA No.31 of 2019 in Criminal Appeal No.73 of 2019.

Mr. Abhishek Yende for the Applicant in APPA No.1607 of 2018 in Criminal Appeal No.1008 of 2015.

CORAM: NITIN W. SAMBRE, J.

DATE: DECEMBER 6, 2019

P.C.:-

1] These Applications are by Accused Nos. 2 and 6 under Section 389 of the Criminal Procedure Code for suspension of sentence and releasing them on bail.

2] In Sessions Case No.49 of 2013, both these accused came to be

convicted for an offence punishable under Section 376 of IPC and were sentenced to suffer 10 years rigorous imprisonment and to pay fine of Rs 1000/- each. They were also convicted for an offence punishable under Section 342 of IPC and Sections 4 and 6 of the Protection of Children from Sexual Offences Act. They were further convicted for an offence punishable under Sections 363 and 366A of IPC.

3] The maximum punishment is provided is 10 years. It is not in dispute that the Applicants/Accused are behind bar for more than six years.

4] In the aforesaid backdrop, the submissions are, once the Applicants have served substantive sentence, in this case of six years out of maximum sentence of 10 years as ordered, Applicants, who are students, are entitled to be released on bail.

5] The learned APP has opposed the bail and would submit that the gravity of offence and nature of evidence warrants that the Applicants should not be released on bail by suspending the sentence.

6] With the assistance of learned APP, I have perused the impugned judgment and evidence of the victim, her father who turned hostile i.e. P.W.3.

7] The victim in the case in hand was examined at Exhibit-59. If the evidence of victim is appreciated, prima facie it appears that the victim initially accompanied one of the accused from Bombay to Nashik where alleged offence was committed.

8] Subsequent thereto, victim stayed with her friend P.W. 4 – Sandeep More for a day and then lodged a complaint to Police Station. The conduct of the victim does not appear to be normal or regular in course.

9] One of the appeals was admitted in 2019 and other appeals are pending since 2015 and there is less likelihood that the Appeals would be finally heard in the near future, considering the pendency.

10] In the wake of aforesaid background, in my opinion, case for

consideration for suspension of sentence and grant of bail is made out.

11] This court would like to rely upon the judgment of the Apex Court in the case of *Bhagwan Rama Shinde Gosai and Others vs. State of Gujarat*¹ and in the case of *Kiran Kumar vs. State of M.P.*²

12] As substantive sentence is already served by the Applicants herein, sentence awarded to them is suspended and they are ordered to be released on bail on the P.R. bond of Rs 25,000/- each with one or two sureties each in the like amount. If the Applicants are found to be involved in any other offence after they are released on bail, liberty is granted to the prosecution to move for cancellation of bail. If Applicants, in any way, try to influence the victim or her family members or any witness then also prosecution is at liberty to move for cancellation of bail.

13] Both these applications are accordingly allowed and disposed of.

(NITIN W. SAMBRE, J.)

1 (1999) 4 SCC 421

2 (2001) 9 SCC 211