

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 1827 OF 2018****IN****CRIMINAL APPEAL NO. 799 OF 2018**

Raziya Mohammed Arif Shaikh

.....Applicant

Vs.

The State of Maharashtra

....Respondent.

Mr. Ravindra Gopal Gadgil for the Applicant.

Mr. Mohammed Akbar Ansari for the Appellant in the connected Appeal No. 867 of 2018.

Ms. P.P. Shinde, APP for the Respondent-State.

CORAM : A. S. OKA, AND**A. S. GADKARI, JJ.****DATE : 30th JANUARY, 2019.****P.C.:-**

Heard the learned counsel appearing for the Applicant and the learned APP for the Respondent State.

2 This is an Application for grant of bail and suspension of substantive sentence. The Applicant along with co-accused have been convicted for the offences punishable under Section 328 read with Sections 34, 363, 366-A, 370(4) read with Section 34 of the Indian Penal Code and Section 11 read with Section 12 of the Protection of Children from Sexual Offences Act, 2012, (for short, "*the POCSO*,

Act”).

3 The Applicant and other co-accused have been sentenced to undergo imprisonment for life for the offence punishable under Section 370(4) read with Section 34 of the Indian Penal Code.

4 Our attention is invited to the charge framed against the Applicant and other co-accused. The charge was framed on 16th April, 2014. After prosecution witnesses were examined, an Application was made by the learned Public Prosecutor for framing additional charge. The said Application at Exhibit-77 was allowed by the learned designated Judge under the POCSO Act by an Order dated 22nd March, 2018.

5 Perusal of the additional charges framed in terms of the said Order dated 22nd March, 2018, shows that the additional charges were framed for the offences punishable under Section 328 read with Section 34 of the Indian Penal Code, Section 370 read with Section 34 of the Indian Penal Code and Section 371 read with Section 34 of the Indian Penal Code. In the charges as originally framed, there is no charge framed for the offence of the trafficking under Section 370 read with Section 34 of the Indian Penal Code. The Applicant, as stated earlier, has been sentenced to suffer life imprisonments for the

offence punishable under Section 370(4) read with Section 34 of the Indian Penal Code.

6 Perusal of the Roznama shows that on 22nd March, 2018, the additional charges were framed and on the very day, the prosecution had filed pursis at Exhibit-78 closing the evidence and thereafter, the case was adjourned for hearing of arguments.

7 Thus, factually it appears to us from the Roznama that, after 3 additional charges were framed an opportunity to cross-examine the prosecution witnesses was not granted to the Applicant. Thus, *prima facie*, prejudice was caused to the Applicant. Moreover, the Applicant is a woman. This Appeal is of the year 2018 and is not likely to be heard in the near future. Considering the aforesaid facts, a case is made out for enlarging the Applicant on bail. Hence, we pass the following Order:-

- a) The substantive sentence imposed upon the Applicant under the impugned Judgment and Order dated 25th April, 2018 passed by the learned Additional Sessions Judge and Designated Judge for POCSO, Greater Bombay in POCSO Special Case No. 50 of 20145, shall stand suspended till

the final disposal of the Appeal;

- b) The Applicant shall be enlarged on bail in the sum Rs.15,000/- with one or two sureties to make the amount;
- c) The bail is granted subject to condition of furnishing the detailed address of the place of residence where she proposes to stay after she is enlarged on bail along with her contact telephone/cell phone number to the concerned Jail Superintendent;
- d) The bail is granted subject to further condition that, the Applicant shall report to the concerned Trial Court on first Monday of the months of January and July of every calendar year at 11.00 a.m. till the final disposal of the Appeal;
- e) If the Applicant fails to report as directed above, the concerned Trial Court shall submit a report to the Registrar (Judicial-I) of this Court who shall place the same before the appropriate Bench;

- f) The Applicant shall be enlarge on bail only after verification of the fact that the entire fine amount has been paid.
- g) Application is disposed of in the aforesaid terms.

(A.S. GADKARI, J.)

(A.S. OKA, J.)