

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

**CRIMINAL APPLICATION NO.2027 OF 2018
IN
CRIMINAL APPEAL NO.1122 OF 2018**

Sameer Javed Naik @ Kammo
Aged : 27 years Occ.: Service,
R/o : Lakmanya Nagar Pada 3,
Gomade Chawl, Room no.2,
Behind Bus Stop, Thane
(Presently lodged in Taloja
Central Prison)

.... Applicant
(Ori. Accused)

Vs.

The State of Maharashtra

.... Respondent
(Ori. complainant)

Mr. Mateen Abdul Rahim Shaikh a/w Ms. Adeeba Khan for the
Applicant.

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

Coram : Smt. Sadhana S. Jadhav, J.

Date : 5th February 2019

P.C.:

1 Heard the respective counsel.

2 This is an application under Section 389 Code of Criminal
Procedure. The applicant herein is convicted by the District Judge-4

and Additional Sessions Judge, Thane in Special Case (POCSO) No. 141 of 2014 vide order dated 6th August 2018, for the offences punishable under Sections 354, 323, 504 of the Indian Penal Code and under Section 8 of the Protection of Children from Sexual Offences Act. The applicant is sentenced to suffer rigorous imprisonment for four years and fine of Rs.10,000/-, in default to suffer simple imprisonment for six months for the offence punishable under Section 8 of the Protection of Children from Sexual Offences Act; rigorous imprisonment for six months and fine of Rs.1,000/-, in default to suffer simple imprisonment for fifteen days for the offence punishable under Section 323 of Indian Penal and rigorous imprisonment for six months and fine of Rs.1,000/-, in default to undergo simple imprisonment for fifteen days for the offence punishable under Section 504 of Indian Penal Code.

3 Learned counsel for the applicant submits that the applicant was in custody for 11 months during the trial and since 6th August 2018, he is in custody, hence, he has undergone 17 months imprisonment. Learned APP has vehemently opposed the grant of

bail and submitted that there are as many as 7 crimes registered against the accused in Vartak Nagar Police Station and that there is material to confirm the allegations of the prosecution that the accused is creating terror in local area, wherein the informant is residing. The applicant belongs to a political party i.e. Maharashtra Navnirman Sena and he has given political colour to the present case by suggesting that he has been falsely implicated since he belongs to a political party. In any case, there is material to show that the applicant was not residing in the area, in which the offence has taken place. In fact the applicant had no business to enter into the said area except to create terror under the garb of the fact that his sister is residing in the said area.

4 It is unfortunate that the State machinery has not taken any action against the accused under the provisions of Maharashtra (Bombay) Police Act, despite the fact that there are 7 offences registered against him.

5 Learned counsel for the applicant submits that the applicant has been sentenced to rigorous imprisonment for a short

term sentence i.e. of 4 years, out of which he has undergone 17 months imprisonment and that he has been given set off as contemplated under Section 428 of Code of Criminal Procedure. It is also submitted that the applicant would not reside in Thane in the eventuality of grant of bail and that he would go to his native place. The only consideration for grant of bail is that the applicant has actually undergone 17 months out of 4 years of imprisonment. It is submitted that the applicant would shift to Shrirampur and will permanently reside at Shrirampur upon being enlarged on bail. It is, in these circumstances that the applicant is being enlarged on bail on imposing certain conditions. Hence, the following order.

O R D E R

- i) The application is allowed and stands disposed of.
- ii) The substantive sentence imposed upon the applicant vide judgment and order dated 6th August 2018 is hereby suspended.
- iii) The applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs.1,00,000/- with one or more solvent local sureties in the like amount.

- iv) The applicant shall report to Shrirampur City Police Station on every Friday during the pendency of the appeal.
- v) The applicant shall report to the Court of Sessions Judge (Special Judge), Thane once in three months on the date assigned by the learned Special Court.
- vi) Upon failure to attend any two consecutive dates, the Special Court shall report the same to the High Court and the prosecution would be at liberty to file an application seeking recall of the order passed in an application under Section 389 Cr.P.C.
- vii) The applicant shall not engage himself into any political activities during the pendency of the appeal.
- viii) Upon registration of any other offence either in Shrirampur or any other city in the District of Ahmednagar, the prosecution shall file an application seeking cancellation of bail granted vide this order.
- ix) Liberty is granted to file an application seeking modification of the order after the year 2020.

(*Smt. Sadhana S. Jadhav, J*)