

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1316 OF 2020
IN
CRIMINAL APPEAL NO.240 OF 2020

Siraj Najim (Shaukat) Shaikh,
Age 19 yrs., Occ. Labour,
R/o Tuljapur, Tq. Paithan,
Dist. Aurangabad.

Appellant

... Versus ...

The State of Maharashtra,
Through Paithan Police Station,
Tq. Paithan, Dist. Aurangabad.

... Respondent

...

Mr. N.K. Chaudhary, Advocate for applicant
Mrs. V.S. Chaudhary, APP for respondent/State

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 04th DECEMBER, 2020.

ORDER :

1 Present application has been filed for suspension of sentence. The applicant has been convicted in Special (Child Protection) Case No.158/2019 by Special Judge (Under POCSO Act), Aurangabad on 28.01.2020. He has been sentenced to suffer rigorous imprisonment for

three years and to pay fine of Rs.500/-, in default to suffer rigorous imprisonment for 15 days for the offence of sexual assault under Section 7 punishable under Section 8 of the Protection of Children from Sexual Offences Act, 2012. He has been further sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.500/-, in default to suffer rigorous imprisonment for 15 days for the offence of aggravated sexual assault under Section 9 punishable under Section 10 of the Protection of Children from Sexual Offences Act, 2012.

2 This Court by order dated 29.09.2020 had expressed that since the appellant is 19 years old boy, it would be appropriate to decide the appeal finally, and therefore, the Record and Proceedings was called and steps were taken to hear the appeal finally, at the stage of admission. This step was taken taking into consideration the pandemic situation. However, now, almost the regular Courts are functioning and due to paucity of time it may not be possible to hear the matter finally. Now, the application for suspension of sentence is considered.

3 Heard learned Advocate Mr. N.K. Choudhary for applicant and learned APP Mrs. V.S. Choudhary for respondent/State. Both of them have made submissions in support of their respective contentions.

4 Though the prosecution case was that the accused had committed rape on a six years old girl residing in the neighbourhood and thereby offence was registered under Section 376(2) of the Indian Penal Code and Section 6, 8 and 10 of Protection of Children from Sexual Offences Act, 2012; yet, it appears that after the scanning of the evidence the learned Trial Judge has acquitted the accused of the offence punishable under Section 376 of the Indian Penal Code and Section 6 of the POCSO Act. So also, further he is convicted for the aggravated sexual assault under Section 9 punishable under Section 10 of the POCSO Act. The question arises, when for the same act aggravated provisions have been attracted, whether still under lesser offence the accused can be convicted. Further, now, the sentence, that has been, imposed against the accused is small sentence and for the aforesaid reason that it may not be possible for this Court to take up the matter finally, in view of **Kiran Kumar vs. State of M.P, (2001) 9 SCC 211**, he deserves to be released on bail pending appeal.

5 Further, the accused appears to be under trial i.e. from the date of his arrest. When it is stated that the victim resides in the neighbourhood though the trial is over; yet, security to the witnesses continuously should be provided pending appeal also, and therefore, there would be some conditions on the applicant. Hence, following order.

ORDER

1 Application stands allowed.

2 The substantive sentence imposed on the applicant Siraj Najim (Shaukat) Shaikh in Special (Child Protection) Case No.158/2019 by Special Judge (Under POCSO Act), Aurangabad on 28.01.2020 for the offence under Section 7 punishable under Section 8 and under Section 9 punishable under Section 10 of The Protection of Children from Sexual Offences Act, is hereby suspended till the hearing and conclusion of the Criminal Appeal No.240/2020.

3 The applicant be released on P.R. of Rs.30,000/- with two sureties of Rs.15,000/- each.

4 The applicant shall not visit village Tuljapur, Tq. Paithan, Dist. Aurangabad till the conclusion of the appeal.

5 The applicant proposes that he would reside at Tajnapur (Old Dahiphal), Tq. Shevgaon, Dist. Ahmednagar.

6 He should provide the detailed address of his proposed residence with mobile number for contact to this Court and Special Court (Under POCSO Act), Aurangabad at the time of tendering bail documents.

7 In addition, the applicant to attend Court of Civil Judge Junior
Division and Judicial Magistrate First Class, Shevgaon, Dist. Ahmednagar,
once in three months and the learned Magistrate to maintain the record of
the same and give periodical report to this Court.

8 Needless to say, even during the pendency of appeal the accused
shall not contact the prosecution witnesses, in any manner.

9 Bail before Trial Court.

10 Since Record and Proceedings is received and both the sides are
ready to work out the matter without paper book, printing of paper book is
dispensed with.

(Smt. Vibha Kankanwadi, J.)

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