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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1602 OF 2020
IN
CRIMINAL APPEAL NO.489 OF 2020

Dhiraj s/o Dilip Deshmukh = APPLICANT

VERSUS

The State of Maharashtra = RESPONDENT

Mr.SS Panale, Advocate for Applicant;
Mrs. RP Gour, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 7th October, 2020.

PER COURT:-

1. Heard learned Advocate and learned APP appearing for respective parties.
2. In this Criminal Application, the applicant, who is the original accused, prays for suspension of substantive sentence and releasing him on bail during pendency and final hearing of the Criminal Appeal.
3. The applicant is the original accused in Special Case (POCSO) No.56 of 2019, who has been convicted by learned Extra Joint District Judge and Additional Sessions Judge, Latur vide judgment and order dated 27th August, 2020. The applicant has been convicted, thus, -

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a) Under Section 354(A)(1) of IPC and under Section 8 of POCSO Act, and sentenced to suffer R.I. for three years and to pay fine of Rs. 500, in default, S.I. for two months.

4. It is vehemently submitted on behalf of the applicant that, no independent witness has been examined by the prosecution to prove the case beyond reasonable doubt. The testimony of the victim is the only evidence against the applicant-appellant because throughout the investigation, the person accompanying the victim was Radha Raju Lashkare, whereas during the trial evidence of PW 6 – Radha Raju Itakar is recorded, which has no concern with the alleged incident. There is material variance in the substantive evidence of the victim and her statement under Section 164 of Cr.P.C. The FIR at the instance of the victim against the applicant-appellant is counterblast to the FIR lodged by the appellant against relatives of the victim. The age of the victim is not proved by the prosecution beyond reasonable doubt. There are material contradictions in version of PW 1 and PW 6 which goes to root of the matter. Inference of the guilt of the applicant is drawn by the Trial

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Court in absence of any cogent and reliable evidence which is erroneous and contrary to the evidence on record. The applicant was on bail during the trial and he has not misused the liberty. He has deposited the fine amount. The learned Advocate further argued that the sentences awarded to the applicant by the learned Special Judge are short term sentences. The learned Advocate further submits that the appeal involves other legal and technical points/issues, which the applicant/appellant wants to agitate and address them at the time of final hearing of the appeal and the applicant have every hope of success in the appeal. Consequently, the applicant prays for enlarging him on bail by suspending the substantive sentence awarded by the learned Special Judge on such terms and conditions as this Court may deem fit and proper.

5. Per contra, learned APP resisted the application and supported the reasons assigned by the learned Special Judge while convicting and imposing the sentence against the applicant. The learned APP submitted that the case is based on the direct as well as other evidence. The learned

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Special Judge has properly scanned the evidence brought on record. It is, therefore, submitted that the application being sans merit, deserves to be dismissed and it be dismissed accordingly.

6. As it appears from the impugned judgment of the learned Special Judge, particularly the sentence, that has been awarded against the applicant for offences, in question, is the short-term sentences. In view of the decision in the case of Kiran Kumar Vs. State of M.P. - (2001) 9 SCC 211, benefit will have to be extended to the applicant-appellant when he has demonstrated that the material and significant points raised by him in the appeal are required to be considered at the time of final hearing of the appeal. Further, the applicant was on bail throughout the trial, has not misused his liberty and he had also deposited the fine amount. In view of the matter, it can be said that a case is definitely made out for releasing the applicant on bail by suspending the substantive sentence during pendency and final disposal of the appeal. Hence, following order,-

ORDER

i. The Criminal Application stands

allowed.

ii. The substantive sentence imposed on the applicant by learned Special Judge, vide judgment and order dated 27th August, 2020 in Special Case(POCSO) No.56 of 2019, is hereby suspended till hearing and final disposal of the appeal.

iii. The applicant be released on executing PR and SB of Rs.15,000/ (Rupees fifteen thousand) each.

iv. The applicant shall not commit any criminal activity.

v. The applicant shall remain present before the learned Trial Judge once in six months, till final hearing and disposal of the appeal, commencing from the date he tenders bail papers and, thereafter, the Trial Judge to fix dates for their subsequent appearances.

vi. In case of two consecutive defaults on the part of the applicant to remain present before the Trial Court, the Trial Court to inform this Court about the same and in that eventuality,

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the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicant.

vii. Bail before the Trial Court.

(SMT. VIBHA KANKANWADI,J.)

BDV