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IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1615 OF 2020  
IN  
CRIMINAL APPEAL NO.492 OF 2020

Syed Maheboob s/o Sayed Lal  
Age: 37 Yrs., occ. Labour,  
R/o Wajegaon, Tq. And Dist.  
Nanded

= APPLICANT  
(Orig. applicant)

VERSUS

1) The State of Maharashtra  
Through Police Station,  
Ramteerth, Tq. Biloli,  
District Nanded.

= RESPONDENT/S

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Mr.AN Patale,Advocate for Applicant;

Mrs.VS Choudhari,APP for Respondent-State.

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CORAM : SMT.VIBHA KANKANWADI,J.  
DATE : 17<sup>th</sup> December, 2020.

PER COURT:-

1. Heard learned Advocate Shri Patale and learned APP Mrs. VS Choudhari, appearing for respective parties.

2. By this Criminal Application, the applicant, who is the original accused, approaches this court, praying for suspension of substantive sentence and releasing him on bail during pendency and final hearing of the Criminal Appeal.

3. The applicant is original accused No.1 in Special (POCSO) Case No.14 of 20178, who has been convicted by learned Special Judge, Biloli, vide judgment and order dated 8<sup>th</sup> July, 2020. The applicant has been convicted for the offence punishable under Section 376 of IPC and sentenced to suffer rigorous imprisonment for seven years and to pay fine of Rs.5,000/-, in default, R.I. for three months.

4. It is vehemently submitted on behalf of the applicant that the applicant has challenged the judgment and order of conviction passed by the learned Special Judge by way of the appeal inter alia on numerous grounds as set out in the appeal itself and the applicant is having every hope of success therein. It is submitted that the learned Special Judge did not consider the prosecution evidence judiciously and erred in convicting the applicant/accused. There is no sufficient, cogent, reliable and corroborative evidence to convict the applicant-appellant. The defense of the applicant is that there is financial transaction between the applicant and father of the victim-complainant and the applicant duly proved this fact in cross-examination of the victim. There were several facts and admissions brought by the applicant amid cross-examination of the witnesses which create doubts in respect of the prosecution case, however the learned Judge ignored the same. The police investigation is one-sided. There was delay in lodging the FIR so also disclosing the fact of

rape. Possibility of tutoring the witness can not be ruled out. The case of the prosecution is based on only evidence of the victim and her father. The material witnesses were not examined by the prosecution during trial and investigation. The prosecution case utterly failed to prove its case because the medical evidence of the concerned doctor, who examined the applicant and given his opinion was not surfaced during the trial, so also the material witnesses, panchas to spot panchanama and seizure panchanama, mother and brother of the victim, who were present at the time of recovery of the victim at Nanded were not examined. The victim was major at the material time and during cross-examination she has brought this fact on record by cogent evidence. Consequently, the applicant prays for enlarging him on bail by suspending the substantive sentence imposed by the learned Special Judge on such terms and conditions as this Court may deem fit and proper.

5. Per contra, learned APP strongly resisted the application and supported the reasons given by the learned Special Judge while convicting and imposing the sentence against the applicant. The learned APP submitted that the accused has attempted to commit rape and committed sexual assault upon the victim girl. The applicant has committed sexual intercourse thrice upon the victim. Not only this, the prosecution also examined the minor victim girl wherein she has specifically stated that accused No.1-applicant ,

(4)

with the help of accused No.2, kidnapped her forcibly and and confined in the house of accused No.3 at Nanded. The accused persons committed heinous crime against a minor girl. The medical evidence supports the prosecution case. Sole testimony of the victim is sufficient to hold the guilt of the accused. The prosecution by examining in all eight witnesses proved the guilt of the accused beyond reasonable doubt and, therefore, the learned Special Judge has rightly convicted the applicant which warrants no interference. It is, therefore, submitted that the application lacks merit, it deserves to be dismissed and it be dismissed accordingly.

6. In the instant case, a reference can be made to the observations made by the Hon'ble Apex court in the case of Kiran Kumar Vs. State of M.P. - (2001) 9 SCC 211, wherein the Hon'ble Supreme Court has observed to the effect, - "when a person is convicted and sentenced to a short-term imprisonment, the normal rule is that when his appeal is pending, the sentence should be suspended and rejection is only by way of exception and be put forward for such rejection. If the short-term sentence is allowed to run out during the pendency of the appeal, the appeal itself will become, for all practical purpose, infructuous, so far as the appellant is concerned."

7) As it appears from the impugned judgment of the learned Special Judge, particularly the

sentence, that has been imposed against the applicant for the offence, in question, is a short-term sentence, in view of the decision in the case of Kiran Kumar Vs. State of M.P. - (supra), and, therefore, benefit will have to be given to the applicant-appellant when he has demonstrated that the material and significant points raised by him in the appeal are required to be pondered at the time of final hearing of the appeal. Further, it is to be noted that there is no likelihood that the appeal filed by him would be heard and decided finally in the near future. The Applicant - appellant is, therefore, entitled to be released on bail by suspending sentence, during pendency of the appeal filed by him. Hence, following order,-

#### **ORDER**

I. The substantive sentence imposed upon the applicant by learned Special Judge, Biloli, District Nanded on 8<sup>th</sup> July, 2020 in Special (POCSO) Case No.14/2017, stands suspended till final disposal of the Criminal Appeal.

II. The applicant be released on his executing PR and SB of Rs.30,000/- with two sureties of Rs.15,000/- each.

III. The applicant shall not commit any criminal activity.

IV. The applicant-appellant to remain present before the learned Trial Judge once in six months, till final hearing and disposal of the appeal, starting from the date he tenders bail

(6)

papers and, thereafter the Trial Judge to fix dates for his subsequent appearances.

V. In case of two consecutive defaults on the part of applicant-appellant to remain present before the Trial Court, the Trial Court to inform this Court about the same and in that case the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicant-appellant.

III. The Criminal Application for bail and suspension of the sentence stands disposed of.

V. Bail before the Trial Court.

**(SMT. VIBHA KANKANWADI,J.)**

BDV