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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2187 OF 2020
IN
CRIMINAL APPEAL St.3205 OF 2020
with
CRIMINAL APPLICATION NO.2186/2020

Syed Ansar s/o Syed Sayed = APPLICANT

VERSUS

The State of Maharashtra = RESPONDENT

Mr.GR Syed,Advocate for Applicant;
Mrs.VS Choudhari,APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI,J.
DATE : 9th December, 2020.

PER COURT:-

1. Heard. For the reasons stated in Criminal Application No. 2186 of 2020, moved for condonation of delay, the same is allowed and disposed of. The appeal be registered in accordance with law.

2. Heard learned Advocate and learned APP appearing for respective parties.

3. 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.

4. The applicant is the original accused in

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Special Case (POCSO) No.27 of 2014, who has been convicted by learned Special Judge and Ad-hoc Additional Sessions Judge-1, Parbhani, vide judgment and order dated 10th November, 2017. The applicant has been convicted, thus, -

a) Under Section 377 of IPC and sentenced to suffer R.I. for six years and to pay fine of Rs.10,000/-, in default, S.I. for one year.

. The accused is directed to pay an amount of RS.15,000/- by way of compensation to the victim.

5. It is vehemently submitted on behalf of the applicant that the learned Special Judge erred in convicting the appellant as alleged on the basis of assumptions and presumption which results failure of the prosecution to bring the guilt of the accused at home. False implication of the applicant is apparent from the testimonies of the witnesses. The Court below did not exercise the discretion while giving benefit of doubt to the applicant-appellant. The learned Special Judge failed to appreciate that the prosecution could not establish the offence as alleged, by adducing necessary medical evidence. The learned Judge

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did not consider the statements recorded by the Investigating Officer under Section 164 of Cr.P.C. Inference of the guilt of the applicant is drawn by the Trial Court in absence of any cogent and reliable evidence which is erroneous and contrary to the evidence on record. The applicant is behind the bars since considerable time. He has deposited the fine amount. The learned Advocate further argued that the sentence awarded to the applicant by the learned Special Judge is a short term sentence. The learned Advocate further submits that the appeal involves other legal and technical points/issues, which the applicant/appellant intends to agitate and address them at the time of final hearing of the appeal and the applicant has 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.

6. 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

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learned 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.

7. As it appears from the impugned judgment of the learned Special Judge, particularly the sentence, that has been awarded against the applicant for offences, 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 pondered at the time of final hearing of the appeal. Further, the applicant was/is in jail since long and he has 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 and Ad-hoc Additional Sessions Judge-1, Parbhani, vide judgment and order dated 10th November, 2017 in Special Case(POCSO) No.27 of 2014, 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

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about the same and in that eventuality,
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