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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4305 OF 2019
IN
CRIMINAL APPEAL NO.1301 OF 2019

Bandu @ Prakash Popat Chaudhari
Age: 27 Yrs., occu. Driver,
R/o Rakali Choudhari,
Tq. Ashti, Dist. Beed
At present r/o Shinda, Tq.Karjat
District Ahmednagar = APPLICANT
(Orig. Accused)

VERSUS

The State of Maharashtra
Through Police Station officer,
Karjat Police Station, Tq.Karjat,
District Ahmednagar. = RESPONDENT
(orig.Informant)

Mr.NV Gavare, Advocate for Applicant;
Mrs.RP Gour, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 22nd October, 2020.

PER COURT:-

1. Heard learned Advocate Shri NV Gavare for applicant and learned APP Mrs.RP Gour, for Respondent-State.

2. In this Criminal Application, the applicant 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

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Special Case No.41 of 2019, who has been convicted by learned Judge, Special Court (POCSO Act) Shrigonda, District Ahmednagar, vide judgment and order dated 9th December, 2019. The applicant has been convicted, thus, -

a) For the offence Under Section 363 of IPC, and sentenced to suffer R.I. for three years and to pay fine of Rs.5000, in default, R.I. for one month.

b) For the offence under Section 8 of POCSO Act, and sentenced to suffer R.I. for three years and to pay fine of Rs. 5,000/-, in default, R.I. for one month.

. All the substantive sentences are order to run concurrently and entire fine amount, if recovered, is ordered to be paid to the victim girl.

4. It is vehemently submitted on behalf of the applicant that the prosecution has utterly failed to prove that the victim girl was minor on the date of the alleged incident and bonafide certificate at Exh.33 and School extract at Exh. 39, which reveal date of birth of the victim as 11.8.2002, have not been duly proved. The trial court has failed to appreciate the oral as well as documentary evidence brought on record. The trial court erred in framing the charge at Exh.2 levelled

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against the accused. As the incriminating evidence has not been put to the accused in a statement under Section 313 of Cr.P.C., the entire trial stands vitiated. Testimony of PW 5 -Dr. Sujata Jadhav, who examined the victim girl, is doubtful and untrustworthy as the vital admission given by her to the effect that there are no injuries on the body and genital region, has not been properly appreciated. The Special Court erred in not considering the aspect that the prosecution has utterly failed in not establishing the guilt of the accused beyond reasonable doubt in the light of omissions and contradictions on the part of the prosecution witnesses. 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 learned Advocate further argued that the sentences awarded to the applicant by the learned Sessions Judge is a short term sentences. The learned Advocate further submits that the appeal involves legal points/issues, which the applicant/appellant wants to agitate and address

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

6. As it appears from the impugned judgment of the learned Trial Judge, particularly the sentence, that has been awarded against the applicant for the 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

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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. 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, (POCSO Act) Shrigonda, Dist.Ahmednagar, vide judgment and order dated 9th December, 2019 in Special Case No.41 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

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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, 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