

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 236 OF 2020

IN

CRIMINAL APPEAL NO. 77 OF 2020

Jibrail Nabab Khan

... Applicant/Appellant

V/s.

The State of Maharashtra & Anr.

... Respondents

Ms.Falguni K. Sanghvi for Applicant/Appellant.

Mr.S.S. Hulke, A.P.P. for Respondent No.1-State.

CORAM : A.S. GADKARI, J.

DATE : 4th November 2020.

PC. :

This is an application for suspension of sentence and releasing the applicant on bail.

2. Heard Ms.Sanghvi, learned counsel for the applicant and Mr.Hulke, learned A.P.P. for the respondent-State.

3. Applicant has been convicted under Section 354 of the Indian Penal Code and under Section 10 of the Protection of Children from Sexual Offences Act, 2012 (for short, "POCSO Act") and is sentenced to suffer maximum rigorous imprisonment of 5 years and to pay a total fine of Rs.10,000/- by the learned Designated Judge under POCSO Act for Gr. Bombay, in POCSO Special Case No. 487 of 2016 by its Judgment and Order

dated 16th November 2019.

4. The prosecutrix in the present crime was aged about 4 years on the date of incident i.e. 8th August 2016 and with a view to protect her identity and in consonance with the provisions of Section 228(A) of the Indian Penal Code and Section 33(7) of the POCSO Act, the detailed narration of the facts alleged against the applicant are hereby avoided.

It is to be noted that, the Trial Court has narrated the allegations against the applicant in para No.2 of the impugned Judgment and Order.

5. Learned counsel for the applicant submitted that, there was enmity between the applicant on one hand and the mother of the prosecutrix and neighbour Ms.Nasarin (PW-4) on the other hand and therefore, the applicant has been falsely implicated in the present crime. She further on instructions submitted that, the applicant has already deposited entire fine amount in the Registry of the Trial Court.

6. Record indicates that, the applicant was on bail during the pendency of the trial. After pronouncement of the impugned Judgment and Order, the applicant has been taken into custody. It appears from the record that, the applicant as of today has undergone approximately 14 months of imprisonment out of 5 years of sentence.

7. Taking into consideration the allegations against the applicant and the fact that, he has undergone approximately $\frac{1}{4}$ th of the sentence, the

sentence imposed upon the applicant can be suspended and he can be released on bail on certain conditions.

8. Hence, the following Order :-

- (i) During the pendency of the present Appeal, the substantive sentence imposed upon the applicant is suspended.
- (ii) The Applicant be released on bail in POCSO Special Case No. 487 of 2016 on his furnishing PR. bond of Rs.20,000/- with one or two local sureties in the like amount.
- (iii) After his release from Jail and during the pendency of the present Appeal, applicant shall not enter territorial jurisdiction of Cuffe Parade Police Station and Colaba Police Station, except for marking his presency at Cuffe Parade Police Station as directed herein below.
- (iv) After his release from Jail and during the pendency of the present Appeal, the applicant shall attend Cuffe Parade Police Station on every first Monday of every 3rd Month between 10:00 am and 12:00 noon and mark his presency. The applicant thus shall attend Cuffe Parade Police Station 4 times in a year during the pendency of the present Appeal.
- (v) If the applicant commits even a single default in complying with condition No.(iii) above, in that event, the prosecution will be at liberty to file an application for cancellation of bail.

(vi) The Applicant shall not contact the victim girl and her relatives, who are witnesses in the present crime.

9. Application is allowed in the aforesaid terms.

10. This Order will be digitally signed by the Personal Assistant of this Court. All the concerned will act on production by fax or e-mail of a digitally signed copy of this Order.

[A.S. GADKARI, J.]

Omkar S.
Kumbhakarn

Digitally signed
by Omkar S.
Kumbhakarn
Date:
2020.11.04
15:36:33 +0530