

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL INTERIM APPLICATION NO. 128 OF 2020
IN
CRIMINAL APPEAL NO. 38 OF 2020

Mufis Yakub Kazi

... Applicant/
Appellant.

Vs.

State of Maharashtra and Anr.

... Respondent

Mr. B.A. Shaikh for the Applicant.

Mr. S. S. Hulke, A.P.P. for Respondent-State.

CORAM : A.S. GADKARI, J.
DATE : 21st October 2020.

PC. :

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

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

3. The applicant has convicted under Sections 354 and 354-A of the Indian Penal Code and under Sections 10 and 12 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'the POCSO Act') and sentenced to suffer maximum rigorous imprisonment for five years and to pay total fine of Rs.20,000/- by the learned Designated Judge under POCSO Act, 2012, for Gr.

Bombay in POCSO Special Case No. 488 of 2016 by its Judgment and Order dated 19th December 2019.

4. It is the allegation against the applicant that, on the date of the alleged incident i.e. 24th July 2016, the prosecutrix was going to attend Istama (Muslim religious function) at the house of one Wali Mohd. Shaikh. At that time, the applicant called her near him and touched her inappropriately.

5. Learned counsel for the applicant submitted that, there are material omissions and/or contradictions in the testimony of prosecutrix. He further submitted that, during the pendency of trial, the applicant was on bail. He further, on instructions, submitted that, the applicant has already deposited entire fine amount in the Registry of the Trial Court, and if it is not deposited till today, the applicant will deposit entire fine amount before his actual release from jail. The said statement is accepted.

6. Taking into consideration the allegation made against the applicant and the fact that the applicant was on bail during the trial, I am inclined to suspend sentence and release the applicant on bail on certain conditions.

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.488 of 2016 on his furnishing PR. bond of Rs.10,000/- with one or two local sureties in the like amount.
- (iii) The applicant be released on cash bail for a period of 12 weeks and during the said period the applicant is directed to comply with the procedure of furnishing sureties.
- (iv) Before his actual release from Jail, the applicant shall deposit entire fine amount in the Registry of the Trial Court.
- (v) After his release from Jail and during the pendency of the present Appeal, the applicant shall attend Bhoiwada Police Station, Mumbai on every first Monday of the month between 10:00 am and 12:00 noon initially for a period of one year.

After end of one year, the applicant shall attend Bhoiwada Police Station on every first Monday of the every 3rd Month between 10:00 am and 12:00 noon. The applicant thus shall attend Bhoiwada Police Station 4 times in a year during the pendency of the present Appeal.

- (vi) If the applicant commits two consecutive defaults in complying with condition No.(v) above, in that event, the prosecution will be at liberty to file an application for cancellation of bail.
- (vii) During the pendency of the present Appeal, the applicant shall not contact the prosecutrix or her relatives.

7. Application is allowed in the aforesaid terms.
8. 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.)

Digitally signed
by Omkar S.
Kumbhakarn
Date:
2020.10.21
17:52:29
+0530

Omkar S.
Kumbhakarn