

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 1093 OF 2020

ALONG WITH

INTERIM APPLICATION NO. 1094 OF 2020

IN

CRIMINAL APPEAL NO. 352 OF 2020

Shabib Ahmed Gulam Mohammad Momin ... Applicant/Appellant

V/s.

The State of Maharashtra

... Respondent

Mr.Siddiqui Mohammed Arif a/w. Mr.Irfan Ansari for Applicant/Appellant.

Mr.Amit Palkar, A.P.P. for Respondent-State.

CORAM : A.S. GADKARI, J.

DATE : 6th November 2020.

PC. :

These are applications for suspension of sentence and releasing the applicant on bail.

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

3. Applicant has been convicted under Section 10 of the Protection of Children from Sexual Offences Act, 2012 (for short, "POCSO Act") and under Section 506(II) of the Indian Penal Code and is sentenced to suffer maximum rigorous imprisonment of 5 years and to pay a total fine of Rs.15,000/- by the learned Special Judge (POCSO Act), Greater Bombay in

POCSO Special Case No. 246 of 2017 by its Judgment and Order dated 21st February 2020.

4. Record indicates that, the prosecutrix was aged about 5 years on the date of alleged commission of offence i.e. 27th March 2017. The applicant was a driver of the school bus from which the prosecutrix used to travel to her school. The allegations against the applicant are narrated by the Trial Court in para No.3 of the impugned Judgment and Order and taking into consideration the age of the prosecutrix, reproduction of the same is hereby avoided.

5. Learned counsel for the applicant submitted that, the applicant has already undergone imprisonment of about 3 years and 8 months as of today, out of total 5 years of sentence imposed upon him by the Trial Court. He further submitted that, he has no instructions, as to, whether the applicant has deposited the fine amount in the Registry of the Trial Court as of today or not. However, he makes a statement before this Court that, before his actual release from jail, the applicant will deposit entire fine amount in the Registry of the Trial Court. The said statement is accepted.

6. Taking into consideration the allegations made against the applicant and the fact that the applicant has already undergone about 3 years and 8 months of imprisonment, out of total 5 years of sentence imposed upon him, this Court is of the view that, the sentence imposed upon the applicant can be suspended and the applicant can be released on bail.

7. 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. 246 of 2017 on his furnishing PR. bond of Rs.15,000/- 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) After his release from Jail and during the pendency of the present Appeal, applicant shall not enter territorial jurisdiction of Bandra Police Station, BKC Police Station and Khar Police Station, except for marking his presency at Bandra Police Station as directed herein below.
- (v) After his release from Jail and during the pendency of present Appeal, the applicant shall attend Bandra 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 Bandra Police Station 4 times in a year during the pendency of the present Appeal.
- (vi) If the applicant commits even a single default in complying with condition No.(iv) above, the prosecution will be at liberty to file an application for cancellation of bail.
- (vii) Applicant shall not contact the prosecutrix and complainant (PW-1).

8. Both the Applications are allowed in the aforesaid terms.

9. 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:
2020.11.06
15:48:19 +0530