

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1461 OF 2019
IN
CRIMINAL APPEAL NO.1181 OF 2019

Shabnam @ Shabana Anis Ahmed Shaikh] Applicant

Vs.

The State of Maharashtra and another.] Respondents

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Mr. P.R. Dave, for the Applicant.

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

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CORAM: PRITHVIRAJ K. CHAVAN, J.

DATE: 24th FEBRUARY, 2020.

P.C.:

This is an application under section 389 of the Criminal Procedure Code (for short ‘Cr. P.C.’) for suspension of execution of the substantive sentence, pending the hearing and final disposal of the appeal.

2. Heard learned Counsel for the applicant.

3. Despite being charged under sections 370 (A) (2) of the Indian Penal Code (for short ‘I.P.C’) and under section 4 of the Immoral Traffic

(Prevention) Act, 1956 (for short 'PITA' Act') and also under sections 4 and 8 r/w section 17 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO'), the applicant came to be acquitted by the impugned judgment dated 29th July, 2019.

4. The applicant came to be convicted only of the offence punishable under section 5 of the of the Immoral Traffic (Prevention) Act, 1956 and has been sentenced to suffer seven years Rigorous Imprisonment with a fine of Rs.5,000/-, in default, Rigorous Imprisonment for one month.

5. Learned Counsel has, *inter alia*, drawn my attention to paragraph 17 of the of the impugned judgment wherein the trial Court had specifically observed that there is lack of evidence *qua* any act of sexual assault or for that matter, the applicant was living on the earnings of prostitution business. There was no evidence even in respect of offence under section 4 of the PITA Act as well as under section 4 r/w section 8 and 17 of the POCSO Act.

6. It seems that there are chances of the applicant succeeding in the appeal. The Appeal is of 2019 and, therefore, chances of it being heard in near future are bleak.

7. Considering the aforesaid circumstances and in view of the fact that there are no criminal antecedents against the applicant, no purpose would be served in continuing his incarceration behind the bars. Consequently, the following order is expedient;

[1] Pending the hearing and final disposal of the appeal, execution of the substantive sentence is suspended on applicant furnishing or executing a P.R. bond in the sum of Rs.20,000/- with one or two sureties in the like amount to the satisfaction of the learned Additional Sessions Judge, Mumbai.

[2] Deposit of fine amount also be a condition precedent for the release of the applicant on bail if not already deposited.

[3] The applicant shall not leave the jurisdiction of the learned Additional Sessions Judge, Mumbai without seeking prior permission.

[4] The applicant shall attend this Court as and when directed to do so.

[5] Needless to state that in case of breach of any of the conditions hereinabove would entitle the prosecution to apply for cancellation of the bail.

8. The application stands disposed of in the aforesaid terms.

[PRITHVIRAJ K. CHAVAN, J.]