

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION**

**I.A. NO. 2 OF 2019
IN
APPEAL NO. 1702 OF 2019**

WITH

**I.A. NO. 1 OF 2019
IN
APPEAL NO. 1702 OF 2019**

Inayat Saban Ali Sajan

....Applicant.

Vs.

State of Maharashtra

....Respondent.

Mr. Rajinder Singh Saluja a/w Mr. Sharif Khan and Mr. M.H. Sayed for the Applicant.

Smt. Rutuja Ambekar APP for the Respondent-State.

CORAM : A. S. GADKARI, J.

DATE : 11TH SEPTEMBER, 2020.

PC:-

These are the Applications for suspension of sentence and for releasing the Applicant on bail.

2 Heard Mr. Saluja, learned counsel for the Applicant and Smt. Ambekar, learned APP for the Respondent-State.

3 The prosecution case in brief is that, when the victim boy was proceeding towards his house after alighting from an auto-rickshaw, the Appellant followed him. He informed the security guard at the entrance of

the building that, he is a Tuition Teacher, accompanied the victim in the lift and tried to kiss him. The lift stopped on the 6th floor, where the residential premises of the victim boy was situated. His mother was standing there. The victim thereafter went inside the house. This incident happened at about 3.30 p.m. on 18th December, 2013. The victim informed the said incident to his father at about 9.30 p.m. when he returned from his work.

4 The Trial Court has convicted the Appellant-Applicant under Section 10 of the Protection of Children from Sexual Offences (POCSO) Act, 2012 (for short, “POCSO Act”) and has been sentenced to suffer rigorous imprisonment for 5 years and to pay fine of Rs.20,000/- in default, to suffer rigorous imprisonment for six months.

Perusal of evidence would *prima facie* indicate that, application of Section 10 of the POCSO Act in the present crime is misplaced as there was no aggravated sexual assault committed by the Applicant as contemplated under Section 2(1)(b) read with Section 9 of the POCSO Act.

5 Learned counsel for the Applicant submitted that, the Applicant was on bail during the trial. He on instructions submitted that, the Applicant could not deposit the fine amount, as he was immediately taken into custody after pronouncement of Judgment. He on instructions further submitted that, the Applicant will deposit the entire fine amount in the Registry of the Trial Court before his actual release from Jail. The said

statement is accepted as an undertaking given to this Court. He further submitted that, there are no antecedents at the discredit of the Applicant.

6 In view of the above, the Applicant can be released on bail.

Hence the following Order:-

- a) During the pendency of the present Appeal, the substantive sentence imposed upon the Applicant is suspended.
- b) Applicant be released on bail in POCSO Special Case No.512 of 2015 on his furnishing PR bond of Rs.25,000/- with one or two local sureties in the like amount.
- c) After his release from Jail, the Applicant shall attend the Bandra Police Station on every first Monday of alternate month between 10.00 a.m. and 12.00 noon and shall mark his presence.
- d) Any two consecutive defaults in complying with the aforesaid conditions will attract the provisions of cancellation of bail.
- e) The Applicant shall not tamper with the evidence and/or pressurize the prosecution witnesses.

7 Both the Applications are allowed in the aforesaid terms.

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

(A.S. GADKARI, J.)

Sanjiv S.
Mashalkar
Digitally
signed by
Sanjiv S.
Mashalkar
Date:
2020.09.11
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+0530