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

***CRIMINAL INTERIM APPLICATION NO.1 OF 2019
(BAIL)
IN
CRIMINAL APPEAL NO.1681 OF 2019***

Savio Alfred D'sa	...Applicant
Versus	
The State of Maharashtra	...Respondent

Mr. Chaitanya Pendse, for the Applicant.

Ms. M. H. Mhatre, A.P.P. for the Respondent – State.

CORAM : REVATI MOHITE DERE, J.

DATE : 26th JUNE, 2020

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the applicant seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of his appeal.
3. Learned Counsel for the Applicant submits that the FIR was lodged by the victim – H's father on 9th November, 2014. He submits that

although there were 3 victim boys, aged 15 years i.e. victim – S, victim – H and victim – R, victim – R has not been examined by the prosecution. He submits that as far as victim – H is concerned, there are allegations that the applicant touched him inappropriately during the tuition classes. As far as victim – S is concerned, it is alleged by the prosecution that the applicant committed an offence punishable under Section 6 of Protection of Children from Sexual Offences Act and under Section 377 of the Indian Penal Code as against the said victim. He submits that the prosecution has not examined the doctor and that the victim boys had also refused themselves to be medically examined. Learned Counsel for the applicant submits that the learned Judge had failed to consider the witnesses examined by the applicant as defence witnesses in support of his case. He submits that the evidence of the defence witnesses ought to have been given the same weightage as that of the prosecution witnesses. He submits that the applicant was on bail pending trial, and that he has not misused or abused the liberty granted to him. He submits that the allegations made against the applicant were baseless having regard to the evidence that has come on record and the number of students that would attend the tuition classes of the applicant. Learned Counsel for the applicant further submits that the procedure as contemplated under Section 24 of Protection of Children from Sexual Offences Act has also not been complied with.

4. Learned A.P.P. without accepting the submission that Section 24 has not been complied with submits that the same would at the highest be a procedural irregularity and not an illegality. She also submits that considering the nature of allegations the question of sending the boys for medical examination does not arise.

5. Perused the papers. *Prima facie*, there are some inconsistencies that have come in the evidence on record. Having regard to what is stated aforesaid and the fact that the applicant was on bail pending trial, and that he not misused or abused the liberty granted to him, the application is allowed and the applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of his Appeal, on the following terms and conditions :

ORDER

- i) The Applicant be released on cash bail in the sum of Rs.25,000/-, for a period of eight weeks;
- ii) The Applicant shall within the said period of eight weeks, furnish P.R. Bond in the sum of Rs.25,000/-, with one or two sureties in the like amount;

iii) The Applicant shall report to the trial Court, once in four months on the day/date specified by the trial Court, till his Appeal is finally disposed of;

iv) The Applicant shall keep the trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;

v) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

6. The Application is allowed in the aforesaid terms and is accordingly disposed of.

7. All concerned to act on the copy of this order, digitally signed by the Private Secretary of this Court.

REVATI MOHITE DERE, J.