

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

**INTERIM APPLICATION NO.1402 OF 2019
ALONG WITH
INTERIM APPLICATION NO.1403 OF 2019
IN
CRIMINAL APPEAL NO.1611 OF 2019**

Mohammad Munna @ Munna Kaka
Madarang Raine ... Applicant

Versus

The State of Maharashtra ... Respondent

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Ms. Priti Tiwari i/b. Mr. V. S. Tiwari, Advocate for the Applicant in
both Interim Applications.

Mr. A. R. Kapadnis, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 21th OCTOBER, 2020.

PER COURT:

1. These applications are preferred for seeking suspension of sentence and grant of bail during pendency of appeal preferred by the applicant challenging the Judgment and order dated 1st October, 2019 passed by learned Additional Sessions Judge-8, Thane, in Special Case (POCSO) No. 103 of 2015 convicting the applicant for offence punishable under Section 376(2)(i) of Indian Penal Code and Section 3 punishable under Section 4 of Protection from Sexual Offences Act, 2012 (for Short “POCSO ACT”). The applicant has

been sentenced to suffer rigorous imprisonment for ten years on each count and the sentences were directed concurrently.

2. The appeal has been admitted and it is pending for hearing.

3. Learned advocate for the applicant submitted that there is no evidence to convict the applicant for alleged offences. The applicant is in custody from 14th February, 2015 and thus he has undergone imprisonment for a period of about five and half years. There are no criminal antecedents against the applicant. Learned Advocate pointed out the evidence of witnesses and contended that the victim as well as the mother of victim has not supported the prosecution case. They were cross examined by the prosecution but nothing could be elicited in support of prosecution. There is no corroborative evidence to support the prosecution case. The C.A. Report with regards to clothes of the victim and the accused indicate that, ABO grouping is inconclusive. The Medical Officer who had allegedly examined the victim was not examined before the Court in spite of giving opportunity to the prosecution. The Trial Court convicted the applicant by relying upon the statement of victim under Section 164 of Cr.P.C. The prosecution had not confronted the victim with the statement under Section 164 of Cr.P.C.

4. Learned APP submitted that the victim was minor at the time of incident. The witnesses viz. victim and her mother had turned hostile at the instance of the accused. The offence is of serious in nature. The accused was relative of victim. The trial Court has relied upon the version of the victim in statement under Section 164 of Cr.P.C. and C.A. Report. The signature of the Medical Officer who issued the medical certificate with regards to examination of victim was identified by another Medical Officer. The accused is convicted for offences under Section 376(2)(i) as well as under POCSO Act. Hence, the application may be rejected.

5. On perusal of the evidence of PW-1 (victim), it is apparent that, she has not supported the prosecution. At the time of alleged incident she was aged about 15 years and when her evidence was recorded she was aged about 17 years. Since she has resiled from her version, she was cross examined by the prosecution. However, even in the cross examination she did not support the prosecution in any manner. Her mothers' evidence also do not support the prosecution case. The medical officer who had examined the victim was not examined by the prosecution. Apparently, the trial Court convicted the applicant on the basis of the statement under Section 164 of Cr.P.C. In the light of the nature of evidence and

considering the fact that the applicant is in custody for a period of about five and half years, the sentence of imprisonment can be suspended pending final disposal of the appeal against conviction preferred by the applicant.

ORDER

- i) Interim Application No.1402 of 2019 and 1403 of 2019 are allowed.
- ii) The sentence of imprisonment imposed vide Judgment and order dated 1st October, 2019 passed by the Additional Sessions Judge-8, Thane in Special Case (POCSO) No. 103 of 2015 convicting the applicant for offence under Section 376(2)(i) of Indian Penal Code and Section 3 r/w Section 4 of POCSO Act is suspended and the applicant is directed to be released on bail on his furnishing P.R. bond in the sum of Rs.25,000/- with one or more sureties in the like amount.
- iii) The applicant shall report concerned Police Station once in a month on every first Saturday of the month between 11.00 a.m. to 1.00 p.m. till further order.
- iv) The applicant is permitted to furnish cash security

bail in the sum of Rs.25,000/- for a period of 12 weeks in lieu of surety.

v) Interim Application No.1402 of 2019 and 1403 of 2019 stand disposed of accordingly.

6. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)