

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**15. CRIMINAL APPLICATION NO. 623 OF 2020
IN**

APEAL/177/2020

SHAIKH WAZIR SHAIKH JAMAL

VERSUS

THE STATE OF MAHARASHTRA AND ANR

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Advocate for the Applicant : Mr. P.P.More
APP for Respondents-State : Mrs. G.L. Deshpande

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CORAM : N.R. BORKAR , J.

DATE : 11th October, 2021.

P. C. :

1. This is an application for suspension of substantive sentence and to release the applicant on bail.

2. The applicant came to be convicted for the offences punishable under Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012 (for short "POCSO" Act) and sentenced to suffer rigorous imprisonment for 10 years and to pay fine of Rs. 5,000/- and in default to suffer R.I. for 6 months. The applicant has been further convicted for the offence punishable under Section 12 of the POCSO Act and sentenced to suffer rigorous imprisonment for 6

months and to pay fine of Rs 3,000/- and in default to suffer R.I. for one month.

3. I have heard learned counsel for the applicant and the learned APP for the respondent-State.

4. It is submitted on behalf of the applicant that as on today the applicant is aged about 72 years. In support of the submission, learned counsel for the applicant, has tendered photocopy of Adhar Card of the applicant. It is taken on record and marked as "X" for identification.

5. It is further submitted that the applicant came to be convicted on the sole testimony of PW 1 i.e. the mother of the victim. It is submitted that there is delay of four day in lodging F.I.R. It is further submitted that the applicant was on bail during trial and he did not misuse the liberty granted to him.

6. On the other hand, the learned APP for respondent State has submitted that the applicant is involved in heinous crime. It is submitted that at the time of incident the victim was aged about 3 and 1/2 years. It is submitted that considering the nature of the offence the sentence may not be suspended and applicant may not be

released on bail.

7. It appears from the judgment and order of the trial Court that the applicant was in jail during the trial from 12.5.2018 till 25.2.2019 and post conviction i.e. from 30.01.2020 till date. Thus the applicant till date has undergone more than two and half years of punishment.

8. Considering these facts and circumstances and age of the applicant, I am inclined to suspend the substantive sentence and release the applicant on bail. In the result following order is passed :

ORDER

1. Application is allowed.
2. The substantive sentence imposed by the trial Court is suspended and the applicant be released on bail on executing his P.R. bond in the sum of Rs. 25,000/- (Rs. Twenty Five Thousand) and one surety in the like amount.
3. Bail before the Trial Court.

(N.R. BORKAR)
JUDGE