

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

**CRIMINAL APPLICATION NO.875 OF 2021
IN
CRIMINAL APPEAL NO.193 OF 2021**

Shaikh Siraj Shaikh Munshi ..Applicant

Vs.

The State of Maharashtra ..Respondent

Mr.S.S.Thombre, Advocate for applicant

Mrs.G.L.Deshpande, APP for respondent

**CORAM : R.G. AVACHAT, J.
RESERVED ON : JUNE 29, 2021
PRONOUNCED ON : JULY 06, 2021**

ORDER :-

This is an application for suspension of substantive sentence of imprisonment. The applicant/appellant has been convicted by learned Addl. Sessions Judge, Ambajogai, vide judgment dated 18.03.2021 in Special (POCSO) Case No.19 of 2017, for the following offences:-

Sr. No.	Offence	Sentence
1.	354 of I.P.C.	To suffer R.I. for five years and pay fine of

		of Rs.10,000/-. In default of payment of fine, to suffer R.I. for two months.
2	Section 7 punishable under Section 8 of POCSO Act	To suffer R.I. for five years and to pay fine of Rs.10,000/-. In default, to suffer R.I. for two months
3	Section 3(1)(w)(i) of S.C. and S.T. (Prevention of Atrocities) Act, 1989	To suffer R.I. for one year and to pay fine of Rs.5,000/-. In default, to suffer R.I. for two months.

The substantive sentences have been directed to run concurrently. The applicant/appellant, as such, is to undergo sentence of rigorous imprisonment for five years.

2. Heard.

3. Mr.S.S.Thombre, learned counsel for the applicant/appellant, would submit that the applicant was on bail pending the trial. The statement of the victim was recorded five days after the alleged incident. It is mother of the victim, who has lodged the FIR on her (daughter's) say. As such, it is hearsay. It was a month of May. The schools had summer vacation. The victim had, therefore, no reason to buy

a note book. It was a weekly bazar day. There were 4-5 stationary shops and still, the victim went to the shop of the applicant/appellant that was far away from her residence. The mother of the victim had a reason to falsely implicate the applicant/appellant since her sister's daughter also alleged the applicant to have had inappropriately touched her waist about 15 days before the offence in question. According to learned counsel, it will take time for the appeal to come up for hearing. It is short term sentence. He, therefore, urged for allowing the application.

4. Learned APP would, on the other hand, submit for rejection of the application.

5. With a view to avoid repetition, it is simply stated that the submissions of learned counsel for the applicant/appellant, *prima facie*, appeal to this Court for grant of the application.

6. In the case of **Kiran Kumar Vs. State of M.P., (2001)9 SCC 211**, the Apex Court, in paragraph 3 has observed thus:-

"3. This Court has held in Bhagwan Rama Shinde Gosai Vs. State of Gujarat, (1999)4 SCC 421 that when a person is convicted and sentenced to a short-term imprisonment the normal rule is that when his appeal is pending the sentence should be suspended and rejection is only by way of exception and be put forward for such rejection."

7. In view of the above, I am inclined to suspend the substantive sentence of imprisonment of the applicant.

8. Hence, the following order:-

(i) Pending the appeal, the substantive sentence of imprisonment imposed by the trial Court is suspended. The applicant be released on bail on executing P.R. Bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.

(ii) The application stands disposed of.

[R.G. AVACHAT, J.]