

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

CRIMINAL APPEAL NO.366 OF 2020

Ganpat s/o Shrawan Sonwane,
Age; 45 years, Occ; Nil,
R/o; Mundkheda, Tq. Jamner,
Dist. Jalgaon,
At present in Central Jail Nashik Road,
Nashik. ...Appellant.

VERSUS

The State of Maharashtra,
Through Jamner Police Station
Tq. Jamner, Dist. Jalgaon. ...Respondent

...
Advocate for Appellant : Mr. Yogesh Jadhav (appointed for Appellant)
APP for Respondent-State : Mrs. G.L.Deshpande
...

CORAM : N.R. BORKAR , J.

DATE : 03rd DECEMBER, 2021.

ORAL JUDGMENT :

1. This appeal takes an exception to the judgment and order dated 18.09.2019 passed by the Special Sessions Judge, Jalgaon in Special Case No. 68 of 2015.

2. By the order impugned, the appellant who was accused before the trial Court has been convicted for the offence punishable under Section 342 of the Indian Penal Code (for short "I.P.C.") and sentenced to suffer simple imprisonment for 6 months. The appellant has been further convicted for the offence punishable under Section

354-B of the I.P.C. and sentenced to suffer S.I. for 4 years and to pay fine of Rs. 5,000/-, in default of payment of fine to suffer S.I. for 1 year. Appellant has been further convicted for the offence punishable under Section 7 read with Section 8 of the Protection of Children from Sexual Offences Act (for short “POCSO” Act) and sentenced to suffer S.I. for 4 years and to pay fine of Rs. 1,000/- and in default to suffer S.I. for 1 year. All the sentences are directed to run concurrently.

3. During the pendency of this appeal the appellant has written a letter to this Court requesting that his appeal be dismissed, as the punishment awarded by the trial Court is acceptable to him.

4. In view of said letter this Court by order dated 26.11.2021, directed the learned APP to seek instructions from the jail authorities as to under what circumstances the appellant has written the said letter.

5. Pursuant to said order the learned A.P.P. has sought instructions from the jail authorities and as per her instructions, the appellant wrote the said letter as very short period of his sentence is remaining. The learned A.P.P. has tendered on record nominal roll of the appellant forwarded to her by the jail authorities. It appears from the nominal roll of the appellant, that the appellant, out of the sentence of 4 years has already undergone 3 years, 2 months and 27

days. The learned APP submits that the appellant had shown willingness to deposit the fine amount of Rs. 6,000/-.

6. The learned counsel for the appellant submits that considering facts and circumstances, leniency be shown to the appellant. It is submitted that except for this case, the appellant is not involved in any other criminal case. It is submitted considering the old age of the appellant, the sentence of imprisonment imposed by the trial court be reduced to the period of detention the appellant has already undergone till date.

7. On the other hand, learned A.P.P. for the respondent-State submits that considering the nature of the offence the appellant, deserves no leniency.

8. It is not shown that the appellant is involved in any other criminal case. Considering this fact and as the appellant has already undergone more than 3 years of sentence, the following order is passed :

ORDER

- a. Appeal is partly allowed.
- b. The conviction of the appellant under Section 342, 354-B of the Indian Penal Code and Section 7 read with Section 8 of the Protection of Children From Sexual Offences Act is maintained. However,

the sentence of imprisonment imposed by the trial Court for the said offences is reduced to the period of detention the appellant has already undergone till date.

c. The sentence of fine amount is maintained.

d. On payment of fine amount by the appellant, he shall be released, if not required in any other case.

e. Mr. Yogesh Jadhav, appointed learned counsel for the appellant shall be paid fees in accordance with rules.

(N.R. BORKAR)
JUDGE

mahajansb/