

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

**933 CRIMINAL APPLICATION NO.1222 OF 2021
IN
APEAL/295/2021**

**VISHWANATH RUSTUMRAO MUNDHE
VERSUS
THE STATE OF MAHARASHTRA**

...
Advocate for Applicant : Mr. Rathi S.S.
APP for Respondent/State : Mr. S.P. Sonpawale
...

CORAM : N.R. BORKAR, J.

DATE : 18TH NOVEMBER, 2021

PER COURT :

This is an application under Section 389 (1) of Cr.P.C. for suspension of sentence and to release the applicant on bail.

2. The applicant came to be convicted for the offence punishable under Section 452 of the Indian Penal Code and sentenced to suffer R.I. for 5 (five) years. The applicant also came to be convicted for the offence punishable under Section 354 of the Indian Penal Code and under Section 7 punishable under Section 8 of Protection of Children From Sexual Offence Act (POCSO) and directed to suffer rigorous imprisonment for 5 (five) years.

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

4. Learned counsel for the applicant submits that the learned trial Court has failed to appreciate the evidence on record in its correct perspective and arrived at the wrong findings. It is submitted that the applicant was on bail during the trial and he did not misuse the liberty granted to him. It is submitted that considering the short term of sentence and as the applicant was on bail during the trial, substantive sentence imposed against applicant be suspended and applicant be released on bail till final disposal of the appeal.

5. On the other hand, learned A.P.P. for the respondent/State submits that the applicant is involved in serious crime of sexual assault on a minor girl aged about 13 years. It is submitted that considering the nature of offence, the substantive sentence may not be suspended.

6. It appears that applicant was in jail from 14th August, 2017 to 8th September, 2017 during trial and after his conviction on 23rd March, 2021 he is in jail till today. Admittedly, applicant was on bail during trial. Considering these facts and the short term of sentence, I am inclined to suspend the substantive

sentence and release the applicant on bail. In the result, following order is passed :-

O R D E R

- a] Application is allowed.
- b] The substantive sentence imposed by the learned Special Judge (POCSO), Hingoli on the applicant in Special (child) Case No. 12 of 2017 is suspended during pendency of the appeal.
- c] Applicant be released on bail on his executing P.R. bond of Rs.25,000/- (Rupees Twenty Five Thousand) with one surety in the like amount.
- d] Bail before the trial Court.

(N.R. BORKAR, J.)