

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

**920 CRIMINAL APPLICATION NO.1569 OF 2021
IN
APEAL/50/2020**

Kishor s/o Vilas Avhad,
Age; 22 years, Occ; Labour,
R/o; Partur,, Tq. Partur, Dist; Jalna.

...Applicant

VERSUS

1. The State of Maharashtra,

2. Pravin Shaikh Firoz,
Age; 30 yers, Occ; Labour,
R/o; Shankar-Fata Zopadpatti
Kirayane, Jogeshwari
Aurangabad.

..Respondents

...
Advocate for Applicant : Mr.Bobde Sopan G.
APP for Respondent No. 1-State : Mrs. G.L.Deshpande
Advocate for Respondent No. 2 : Mr.A.Y.Pandule (appointed)
...

CORAM : N.R. BORKAR , J.

DATE : 03rd DECEMBER, 2021.

P. C. :

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

2. Applicant came to be convicted for the offence punishable under Section 354 of the Indian Penal Code (for short "I.P.C.") and sentenced to suffer R.I. for 1 and ½ years. He has been further

convicted for the offence punishable under Section 354-A (1) (ii) of the I.P.C. and sentenced to suffer R.I. for 1 and ½ years. Applicant has been further convicted for the offence punishable under Section 506 of the I.P.C. and sentenced to suffer R.I. for 6 months. In addition to the I.P.C. offences the applicant has been further convicted for the offence punishable under Section 12 of the Protection of Children from Sexual Offences Act (for short “POCSO” Act and sentenced to suffer R.I. for 1 and ½ and under Section 18 of the POCSO Act and sentenced to suffer imprisonment for 4 years and to pay fine of Rs. 2,000/- . All the sentences are directed to run concurrently.

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

4. The learned counsel for the applicant submits that admittedly the report was lodged against an unknown person. It is submitted that there is no convincing evidence to connect the applicant with alleged crime. It is submitted that the applicant is in jail since 11.04.2019 and has thus till date undergone actual punishment of 2 and ½ years. Accordingly, it is submitted that the substantive sentence be suspended and the applicant be released on bail.

5. On the other hand, the learned APP for the Respondent-

State submits that the applicant is involved in serious crime of outraging the modesty of the informant and her daughter. It is submitted that considering the nature of the offence the sentence may not be suspended and the applicant may not be released on bail.

6. Admittedly, F.I.R. was against an unknown person. The applicant has already undergone more than 2 and ½ years of sentence out of the 4 years sentence imposed by the trial Court. Considering these facts, I am inclined to suspend the substantive sentence and release the applicant on bail. Hence following order is passed :

ORDER.

- a. Application is allowed.
- b. Substantive sentence imposed by the trial Court is suspended and the applicant is released on bail on furnishing P.R. bond in the sum of Rs. 25,000/- (Rupees Twenty Five Thousand) with one surety in the like amount.
- c. Bail before the trial Court.

**(N.R. BORKAR)
JUDGE**

mahajansb/