

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

**CRIMINAL APPLICATION NO.1904 OF 2020
IN
CRIMINAL APPEAL NO.562 of 2020**

Kishor s/o Vilas Avhad = **APPLICANT**

VERSUS

The State of Maharashtra = **RESPONDENT**

Mr.SG Bobade & Mr. AS Bangar, Advocates for
Applicant;

Mr.MM Nerlikar, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 19th March, 2021.

PER COURT :-

1. Present application has been filed for releasing the applicant on bail by suspension of substantive sentence imposed by learned Special Judge (POCSO ACT), Aurangabad in Special Case Child Prot.No.106 of 2019 dated 4.2.2020, whereby the present applicant-appellant has been sentenced to suffer R.I. for three years and to pay fine of Rs.1500/-, I.d R.I. for six months for the offence under Section 354 of IPC; and to suffer R.I. for three years and to pay fine of Rs.1500/-, in default, R.I. for six months under Section 8 of the

POCSO Act.

2. Heard learned Advocate and learned APP appearing for respective parties.

3. The applicant was arrested on 2.5.2019 and since then he is in jail and near about more than half of the sentence he has already undergone. The sentence awarded against the applicant is a short term sentence. The applicant is only earning member in his family and his family depends upon him. The applicant will abide by the terms of the bail, if released. Consequently, the applicant prays for releasing him on bail by suspending the substantive sentence awarded by the learned Special Judge on such terms and conditions as this Court may deem fit and proper.

4. Per contra, learned APP resisted the application and supported the reasons assigned by the learned Special Judge while convicting the applicant-appellant and imposing the sentences referred to above. The prosecution has examined total four witnesses. From the same, it seems that

there is incriminating evidence against the accused. There is ample evidence against the applicant to connect the alleged crime. the learned Special Judge has properly scanned the evidence brought on record. It is, therefore, submitted that the applicant being sans merit, deserves to be dismissed and it be dismissed accordingly.

5. As it appears from the impugned judgment of the learned Special Judge, particularly the sentences those have been awarded against the applicant are the short-term sentences. In view of decision in the case of Kiran Kumar Vs. State of M.P.- (2001) 9 SCC 211, benefit will have to be given to the applicant when he has demonstrated that the material and significant points raised by him in the appeal are required to be considered at the time of final hearing of the appeal. Further, applicant has undergone half of the sentence awarded to him. Therefore, it can be said that a case is definitely made out for releasing the applicant on bail by suspending the substantive sentence during pendency and final disposal of the appeal. Hence, following order, -

ORDER

- I. The Criminal Application stands allowed;
- II. The substantive sentence imposed on the applicant by the learned Special Judge (POCSO ACT), Aurangabad in Special Case Child Prot.No.106 of 2019 dated 4.2.2020, is hereby suspended till hearing and final disposal of the appeal.
- III. The applicant be released on his executing PR and SB of Rs.30,000/- with two sureties of Rs.15,000/- each.
- IV. The applicant shall not commit any criminal activity.
- V. The applicant-appellant to remain present before the learned Trial Judge once in six months, till final hearing and disposal of the appeal, starting from the date he tenders bail papers and, thereafter the Trial Judge to fix dates for his subsequent appearances.
- VI. In case of two consecutive defaults on

the part of applicant-appellant to remain present before the Trial Court, the Trial Court to inform this Court about the same and in that case the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicant-appellant.

VII. Bail before the Trial Court.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV