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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2194 OF 2020
IN
CRIMINAL APPEAL NO.627 OF 2020

Trimbak s/o Ramkrushna Dahiwal
Age: 45 Yrs., occ. Labour,
R/o Sistekadi, Old Jalna,
At Present R/o - CP Talav,
Ramnagar, Road No.25,
Slum Area, Wagale Estate,
Thane.

= APPLICANT
(Orig.Accused)

VERSUS

1) The State of Maharashtra
Through Police Station
Kadim Jalna, Tq. and
District Jalna.

= RESPONDENT

Mr.VM Jaware,Advocate for Applicant;
Mrs.VS Choudhary,APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI,J.
DATE : 4th January, 2021.

PER COURT:-

1. Heard learned Advocate Mr. VM Jaware for applicant and learned APP Mrs. VS Choudhari, for Respondent-State.

2. This Criminal Application is moved by the the applicant for suspension of substantive sentence imposed against him and releasing him on bail during pendency and final hearing of the aforesaid Criminal Appeal.

(2)

3. The applicant is the original accused in Special (POCSO) Case No.62 of 2020, who has been convicted by learned Special Judge, Jalna, vide judgment and order dated 17th March, 2020, for the offence punishable under Section 354 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs. 1,000/-, in default R.I. for one month and under Section 8 of The Protection of Children from Sexual Offences Act, 2012 (for short, POCSO Act) and sentenced to suffer simple imprisonment for three years and to pay fine of Rs.1,000/-, in default, S.I. for one month. Both the sentences are ordered to run concurrently.

4. It is vehemently submitted on behalf of the applicant that the applicant has challenged the judgment and order of conviction passed by the learned Special Judge by way of the appeal, inter alia, on numerous grounds as set out in the appeal itself and the applicant is having every hope of success therein. It is further submitted that the applicant is behind the bars since 22.11.2018 and he has undergone the imprisonment for about more

(3)

than two years. He has deposited the fine amount. He has no criminal antecedents. The applicant would abide by any conditions that may be imposed if enlarged on bail. The learned Advocate further submits that the appeal involves other legal points/issues, which the applicant/appellant intends to agitate and address them at the time of final hearing of the appeal. Consequently, the applicant prays for releasing him on bail by suspending the substantive sentence imposed by the learned Special Judge on such terms and conditions as this Court may deem fit and proper.

5. Per contra, learned APP strongly objected the application and supported the reasons assigned by the learned Special Judge while convicting and imposing the sentence against the applicant. The learned APP submitted that The learned Special Judge has properly scanned the evidence brought on record. It is, therefore, submitted that the application being sans merit, it deserves to be dismissed and it be dismissed accordingly.

6. As it appears from the impugned judgment

(4)

of the learned Special Judge, particularly the sentence, that has been imposed against the applicant for the offence, in question, is a short-term sentence, in view of the decision in the case of Kiran Kumar Vs. State of M.P. - (2001) 9 SCC 211, a benefit will have to be given to the applicant-appellant 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, the applicant has undergone the maximum term of the sentence, i.e. for about more than two years, imposed against him and he has deposited the fine amount. In this view of the matter, 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 upon the applicant by learned

(5)

Special Judge, Jalna in Special (POCSO) Case No.62 of 2020, vide judgment and order dated 17th March, 2020, is hereby suspended till hearing and final disposal of the appeal.

iii. The applicant be released on his executing PR of Rs.30,000/ (Rupees thirty thousand) with two sureties of Rs. 15,000/- (Rupees fifteen thousand) each.

iv. The applicant shall not commit any criminal activity.

v. The applicant shall remain present before the learned Trial Judge once in six months, till final hearing and disposal of the appeal, commencing from the date he tenders bail paper/s and, thereafter, the Trial Judge to fix dates for the subsequent appearances.

vi. In case of two consecutive defaults on the part of the applicant to

(6)

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

vii. Bail before the Trial Court.

(SMT. VIBHA KANKANWADI,J.)

BDV