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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**15 CRIMINAL APPLICATION NO.2431 OF 2021
IN APEAL/514/2021**

**SACHIN SHESHERAO SAROLE AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA**

Mr. Gopal D. Kale, Advocate for the applicants
Mr. Manoj Shelke, Advocate for the respondent NO.2
Mrs. G. L. Deshpande, APP for the respondent/State

CORAM : N. R. BORKAR, J.

DATE : 13-12-2021

P. C.

. This is an application under Section 389 of the Code of Criminal Procedure for suspension of sentence and to release the applicants on bail.

2. The applicant No.1 came to be convicted for the offence punishable under Section 4 of the Protection of Children from the Sexual Offences Act, (hereinafter referred to as the 'the POCSO Act') and sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs. 10,000/-, in default, to suffer rigorous imprisonment for one year. The applicant No.1 is further convicted for the offence

punishable under Section 376(1) of the IPC and sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs. 10,000/-, in default, to suffer rigorous imprisonment for one year. The applicant No.2 came to be convicted for the offence punishable under Sections 4 read with Section 17 of the POCSO Act and sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs. 10,000/-, in default, to suffer rigorous imprisonment for one year. The applicant No.2 is further convicted for the offence punishable under Section 376(1) read with Section 109 of the IPC and sentenced to suffer rigorous imprisonment for ten years and to pay fine of Rs. 10,000/-, in default, to suffer rigorous imprisonment for one year. All the sentences are directed to run concurrently.

3. I have heard the learned counsel for the applicants, the learned APP for the respondent/State and the learned counsel for the respondent No.2.

4. The learned counsel for the applicants submit that the trial Court failed to appreciate the evidence on record in its correct perspective and arrived at the wrong findings. The applicants were

on bail during the trial and they did not misuse of liberty granted to them. It is submitted that this court had already admitted the appeal. It is submitted that considering these facts and circumstances the substantive sentence be suspended and the applicants be released on bail.

5. On the other hand the learned APP submits that the applicants have been convicted for the serious offences. It is submitted that considering the nature of offences the substantive sentence may not be suspended and the applicants may not be released on bail.

6. The learned counsel for the respondent No.2 adopted the submission of the learned APP for the respondent/State.

7. I have perused the evidence of the prosecutrix. It appears from the evidence of the prosecutrix that, she and the applicant No.1 were friends. According to the prosecutrix the applicant No.1 committed sexual intercourse with her on the pretext of marriage and then he refused to marry her. There are omissions and contradictions in the

evidence of the prosecutrix.

8. Considering the facts and circumstances of the case, I am inclined to suspend the sentence and to release the applicants on bail. Hence, the following order is passed:

ORDER

i. The application is allowed.

ii. The substantive sentence imposed by the trial court on the applicants namely Sachin S/o. Shesherao Sarole and Kevalbai W/o. Tukaram Sarole vide impugned judgment and order is suspended and the applicants are released on bail on their executing PR bond of Rs. 25,000/- [Rupees Twenty Five Thousand] each with one surety in the like amount.

iii. Bail before the trial court.

iv. R & P be sent back to the concerned trial court.

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v. The concerned trial court shall re-submit the R & P with paper book.

[N. R. BORKAR, J.]

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