

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**930 CRIMINAL APPLICATION NO.2859 OF 2021
IN APPEAL/606/2021**

**ANUP DAMODHAR RATHOD AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

Mr. Rajendra Deshmukh, Senior Advocate a/w Mr. Govind A. Kulkarni, Advocate & Mr. Vishal A. Chavan, Advocate i/b Mr. Devang R. Deshmukh, Advocate for the applicants

Mr. S. Y. Mahajan, Advocate for the respondent No.2
Mr. R. B. Bagul, APP for the respondent/State

CORAM : N. R. BORKAR, J.

DATE : 15-12-2021

P. C.

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

2. The applicants have been convicted for the offences punishable under Sections 354 read with Section 34 of the Indian Penal Code and sentenced to suffer simple imprisonment for three years. The applicants have been further convicted for the

offences punishable under Sections 8,10 and 12 of the Protection of Children From Sexual Offences Act and sentenced to suffer three years for the offences punishable under Sections 8 and 12 and five years for the offence punishable under Section 10. All the sentences are directed to run concurrently.

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

4. The learned Senior Counsel for the applicants submits that the victim has not supported to the prosecution. It is submitted that during trial the applicants were under trial prisoners and have already undergone more than half of the sentence. It is submitted that considering the short term of the sentence the substantive sentence be suspended and the applicants be released on bail.

5. On the other hand the learned APP for the respondent/State and the learned counsel for the respondent No.2 submit that the applicants are convicted for the serious offences punishable under

(3)

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Section 354 read with Section 34 of the IPC and Sections 8, 10 and 12 of the POCSO Act. It is submitted that considering the nature of offences substantive sentence may not be suspended and the applicants may not be released on bail.

6. I have perused the evidence of the victim. She has not supported the prosecution case. The fact that applicants have already undergone more than half of the sentence is not disputed, considering these facts and short term of sentence, I am inclined to suspend the substantive sentence and to release the applicants on bail. Hence, the following order is passed:

ORDER

i. The application is allowed.

ii. Substantive sentence imposed by the learned Special Judge (POCSO), Aurangabad on the applicants, in Special Case (Child Prot.) No. 104 of 2021 is suspended.

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iii. The applicants be released on bail on executing the PR bond of Rs. 25,000/- (Rupees Twenty Five Thousand) each with one surety in the like amount.

iv. Bail before the trial Court.

[N. R. BORKAR, J.]

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