

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 1396 OF 2019
IN
CRIMINAL APPEAL NO. 1608 OF 2019**

Vilas @ Bapu Kashinath Masare ...Applicant
Vs.
The State of Maharashtra & Ors. ...Respondents

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Mr. Viresh Purwant a/w. Mr. Rushikesh Kale, for the Applicant.

Mr. P. H. Gaikwad, APP for the State.

Ms. Grishma Lad, for Respondent No.2.

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CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATE : 6th DECEMBER, 2021

P. C. :

1. By this application filed under Section 389 of Code of Criminal Procedure Code, 1973 the Applicant has sought suspension of sentence imposed by Judgment dated 7th October 2019 passed by the learned Special Judge in Special Case No.42 of 2016, Pandharpur and to release the Applicant on bail.

2. Heard Mr. Viresh Purwant, learned Counsel for the Applicant, Mr. P. H. Gaikwad, learned APP for the State and Ms. Grishma Lad, learned Counsel for Respondent No.2. I have perused the record and considered the submissions advanced by learned Counsel for the respective parties.

3. The applicant was a teacher in Zilla Parishad School at Laxmi Dahiwadi, Mangalwedha, Solapur. It is alleged that the Applicant subjected three minor students of Class IV to penetrative sexual assault. Learned Special Judge, upon considering the evidence adduced by the prosecution has held the Applicant guilty of offence under Section 376(2)(n)(f) of Indian Penal Code and Section 3 read with Section 4, 5(f), (l), (m) read with Section 6 and 9 read with Section 10 of the Protection of Children From Sexual Offences Act, 2012 and sentenced him to undergo R.I. for ten years in default suffer S.I. for one year with fine of Rs.10,000/- in respect of each of these offences.

4. The statements of the victims prima facie indicate that the applicant used to take them to one of the rooms of the school and used to sexually abuses them. These witnesses have claimed that the appellant had subjected them to penetrative sexually assault. The medical evidence does not prima facie support the charge of the penetrative sexual assault. Having gone through the records, in my considered view, offence of aggravated penetrative assault is not made out. The offence committed by the Applicant, prima facie appears to be of aggravated sexual assault, which is punishable with maximum sentence of five years. Learned Counsel for the applicant states that the Applicant had already deposited the fine

and he is in jail since five years and seven months. Considering these facts, in my considered view, this is a fit case for suspension of substantive sentence. Hence, the Application is allowed on following terms and conditions.

ORDER

(i) The substantive sentence of imprisonment imposed by Judgment dated 7th October 2019 passed by the learned Special Judge, Pandharpur in Special Case No.42 of 2016 is suspended, pending hearing of the appeal.

(ii) The Applicant is ordered to be released on bail on furnishing P.R. bonds in sum of Rs.15,000/- (Rupees Fifteen Thousand Only) with one or two sureties in the like amount.

(iii) The Applicant shall report to the trial Court, once in three months on the day/date specified by the Trial Court, till the appeal is finally disposed of.

(iv) The Applicant shall keep the Trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time.

(v) If there are two consecutive defaults in appearing before the Trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

(vi) The application stands disposed of.

(SMT. ANUJA PRABHUDESAI, J.)