

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 128 OF 2021
ALONGWITH
INTERIM APPLICATION NO. 127 OF 2021
IN
CRIMINAL APPEAL NO. 46 OF 2021**

Shri. Kalpesh Maruti Salvi	...Applicant
Versus	
The State of Maharashtra and Anr.	...Respondents

Mr. Aditya Sharma for the Applicant.

Mr. S.V.Gavand, A.P.P for the Respondent No.1-State.

None present for the Respondent No.2.

CORAM : REVATI MOHITE DERE, J.
DATE : 7th MAY, 2021
(Through Video Conferencing)

P.C. :

1. Heard learned Counsel for the parties.

2. By these applications, the applicant seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of his appeal.

3. The applicant, vide judgment and order dated 22/07/2020 passed by the learned Special Judge under POCSO, Borivali Division, Dindoshi, Mumbai in POCSO Special Case No. 2 of 2013, has been convicted and sentenced as under :-

- for the offence punishable under Section 354 of the Indian Penal Code, to suffer rigorous imprisonment for 5 years and to pay fine of Rs.10,000/-, in default to undergo further simple imprisonment for 6 months;
- for the offence punishable under Section 506(ii) of the Indian Penal Code, to suffer rigorous imprisonment for 2 years and to pay fine of Rs.5,000/-, in default, to undergo further simple imprisonment for 3 months;
- for the offence punishable under Section 9(L) r/w Section 10 of the Protection of Children from Sexual Offences Act, 2012, to suffer rigorous imprisonment for 6 years and to pay fine of Rs.15,000/-, in default, to undergo further simple imprisonment for 6 months;

All the substantive sentences were directed to run concurrently.

4. Learned Counsel for the applicant submits that although initially, the applicant was charged for the offence punishable under Section 376 of the Indian Penal Code, subsequently, during the course of the trial, the charge was altered to Section 354 of the Indian Penal Code. He submits that as there was no evidence of 376, the learned Judge altered the said charge. He further submits that even, the medical evidence did not support the prosecution case that the prosecutrix was sexually assaulted i.e. raped by the applicant. Learned Counsel for the applicant submits that the applicant was on bail, pending trial and that out of six years sentence awarded to the applicant, the applicant is in custody for about two years and two months.

5. It is not in dispute that the applicant was on bail, pending trial and has not abused or misused the liberty granted to him. The applicant is in custody for more than two years out the six years sentence awarded to him. Having perused the evidence as against the applicant, the applicant has, prima facie, made out a case for suspension of his sentence and enlargement on bail.

6. Considering the aforesaid, the applications are allowed and the applicant's sentence is suspended and he is enlarged on bail, pending the

hearing and final disposal of his appeal, on the following terms and conditions :-

ORDER

- i) The applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.15,000/- with one or two sureties in the like amount;
- ii) The applicant shall report to the trial Court, once in six months on the day/date specified by the trial Court, till his appeal is finally disposed of;
- iii) The applicant shall not contact or threaten the victim, witnesses or any person concerned with the case;
- 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.

7. The applications are accordingly disposed of.
8. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.