

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

**INTERIM APPLICATION NO. 302 OF 2021
IN
CRIMINAL APPEAL NO.399 OF 2020**

Shahabuddin S/o Late Tajuddin Khan ... Applicant

Versus

The State of Maharashtra & Anr. ... Respondents

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Ms. Jyoti R. Sahu, Advocate for the Applicant.

Mr. Aashish Stapute Advocate for Respondent No.2.

Mr. R. M. Pethe, APP for the Respondent – State.

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CORAM : PRAKASH D. NAIK, J.

DATE : 11th AUGUST, 2021.

PER COURT:

1. This is an application for suspension of sentence and grant of bail. The applicant has been convicted for the offence under Section 4 of Protection of Children from Sexual Offences Act, 2012 (for short ‘POCSO Act’) and sentenced to suffer rigorous imprisonment for ten years. The applicant is also convicted for offence punishable under Section 363 of Indian Penal Code (for short “IPC”) and sentenced to suffer imprisonment for three years. He is also held guilty for the offence punishable under Section 376

of IPC but in view of sentence imposed for conviction under Section 4 of POCSO Act, no separate sentence was awarded to the applicant. He has been acquitted for offence under Section 328 of IPC.

2. The case of the prosecution is that the victim was 14 years old at the time of incident. In June – 2015 she got acquainted with the accused. They used to meet below the building and near the school. Both fell in love with each other. In August – 2016, the victim met the accused at Bandra. She was given something to drink and she felt dizziness after consuming the drink. She was taken to premises. There was physical relationship between them. On 21st September, 2016, the victim took her clothes with intention to elope with the accused. She called the accused at Marine Lines Station. The father of victim called the accused on phone. The accused met victim's father. Later on victim's father visited Marine Line Station and took the victim with him. The father of victim lodged the FIR under Section 363 of IPC. Statement of the victim was recorded. Medical examination of the victim was conducted. Statement of the victim was recorded under Section 164 of Cr.P.C. Charge-sheet was filed.

3. Learned counsel for the applicant submitted that the

applicant was on bail during the trial. He has not misused the facility of bail. The victim and the accused were in love with each other. The medical evidence does not support the prosecution case. There is delay in lodging complaint. The fact that the father of victim had called the applicant and he was found below the building and thereafter, both of them went to Marine Lines Station where the victim was found. Even thereafter, complaint was lodged for offence under Section 363 of IPC. Although, it is alleged that the victim was given something to drink as a result of which she felt dizziness, the applicant has been acquitted for offence under Section 328 of IPC.

4. Learned APP submitted that the victim was minor. Her consent, if any is immaterial. The accused had physical relationship with the victim. The medical examination of the victim was conducted belatedly and thereafter, no fresh injuries were noticed on the person of the victim. The evidence of the witnesses does not suffer from any infirmities such as contradictions and omissions. The applicant has been convicted for offence under Section 4 of POCSO Act and sentenced to suffer imprisonment for ten years.

5. Learned Advocate for the complainant submitted that the evidence of the victim and other witnesses inspire confidence.

The trial Court has convicted the applicant on the basis of the evidence. There is no reason to disbelieve the version of the victim. In the absence of any discrepancies in evidence, the sentence may not be suspended. Reliance is placed on the decision of the Supreme Court in the case of *Preet Pal Singh V/s. State of Uttar Pradesh and another* delivered in Criminal Appeal No. 520 of 2020 on 14th August, 2020. Learned counsel the applicant placed reliance on the observations of the Apex Court in paragraph No.36 of the said decisions which relates to the difference between grant of bail under Section 439 of Cr.P.C. and suspension of sentence under Section 389 of Cr.P.C.

6. I have perused the evidence. The deposition of the victim indicate that she was acquainted with the applicant/accused. Both of them used to meet. She went to Bandra. She was given some juice to drink. She fell dizziness after drinking juice. She went to Bandstand. They were roaming for about two hours. Since the victim was not feeling good, she was taken to friend's house. They entered into premises. The accused had sexual relationship with her. The said incident had occurred in August – 2016. The incident was reported a month thereafter in September, 2016. The evidence indicate that even after the incident of physical relationship, the

victim wanted to meet the accused at Marine Lines Station. The father of the victim called the applicant and he disclosed the whereabouts of the victim and both of them went to Marine Lines Station. Father of the victim took custody of the victim and thereafter, the FIR was lodged under Section 363 of IPC. It is pertinent to note that the applicant has been acquitted for offence under Section 328 of IPC. The applicant was on bail during trial. The applicant has urged that he has good case on merits. It is not reported that the applicant has misused the facility of bail granted to him during the pendency of trial. Appeal may not come up for hearing shortly. The applicant is in custody for 18 months. Considering these aspects, case for grant of suspension of sentence is made out.

7. Hence, I pass the following order:

ORDER

- (i) Interim Application No.302 of 2021 is allowed;
- (ii) The sentence of imprisonment awarded by learned Special Judge, under POCSO Act in POCSO Special Case No. 502 of 2016 vide Judgment and order dated 27th February, 2020 is suspended during the pendency of Criminal Appeal No. 399 of 2020 preferred by the applicant and he is directed to be released on bail on executing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

- (iii) The applicant shall attend the trial Court once in six months till pendency of appeal;
- (iv) The applicant is permitted to furnish cash bail in the sum of Rs.25,000/- for a period of eight weeks in lieu of surety.
- (v) The applicant shall not approach the victim or the complainant.
- (vi) Interim Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)

SAJAKALI
LIYAKAT
JAMADAR

Digitally signed
by SAJAKALI
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JAMADAR
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