

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

***CRIMINAL INTERIM APPLICATION NO. 480 OF 2021
(For Suspension of Sentence)***

WITH

***CRIMINAL INTERIM APPLICATION NO. 479 OF 2021
(For Bail)***

IN

CRIMINAL APPEAL NO. 133 OF 2021

Vijaykumar Avadh Narayan Sharma

...Applicant

Versus

The State of Maharashtra & Anr.

...Respondents

Mr. D. H. Kumtekar for the Applicant

Ms. Veera Shinde, A.P.P for the Respondent No.1–State

PSI Mr. Shingate from Mulund Police Station, is present

CORAM : REVATI MOHITE DERE, J.

MONDAY, 8th MARCH 2021

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 the aforesaid appeal.

3 The applicant, vide judgment and order dated 13th January 2021, passed by learned Special Judge under the Protection of Children from Sexual Offences Act, Greater Bombay, in POCSO Special Case No. 38 of 2014, has been convicted and sentenced as under:-

- for the offence punishable under Section 452 of the Indian Penal Code, to suffer rigorous imprisonment for 1 year and to pay a fine of Rs.1,000/- in default of payment of fine, to undergo simple imprisonment for 1 month;
- for the offence punishable under Section 342 of the Indian Penal Code, to suffer rigorous imprisonment for 1 month and to pay a fine of Rs. 500/- in default of payment of fine, to undergo simple imprisonment for 15 days;
- for the offence punishable under Section 8 of the Protection of Children from Sexual Offences Act, to suffer rigorous imprisonment for 3 years and to pay a fine of Rs.1,000/- in default of payment of fine, to undergo simple imprisonment for 1 month;

All the aforesaid sentences were directed to run concurrently.

The applicant was acquitted for the offence punishable under Section 354-A of the Indian Penal Code and under Section 12 of the Protection of Children from Sexual Offences Act.

It is informed that the applicant has deposited the fine amount.

4 Learned counsel for the applicant states that the applicant was on bail pending trial and has not abused or misused the liberty granted to him. He submits that even post conviction, the applicant's sentence has been suspended. Learned counsel submits that the said period will come to an end.

5 It appears that the respondent No. 2 (grandmother of the victim girl) is served. Learned counsel for the applicant has also tendered an affidavit of service to that effect. The same is taken on record. Learned A.P.P also does not dispute the fact that the respondent No. 2 (grandmother of the victim girl) is served. She submits that respondent No. 2 has since expired, however, she states that the victim girl's aunt has been informed about the hearing of these applications.

6 The appeal has been admitted by this Court vide order dated 25th February 2021. The sentence imposed is a short term sentence and the appeal is not likely to be heard in near future.

7 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 more sureties in the like amount;

- ii) The applicant shall report to the trial Court, once in three months on the day/date specified by the trial Court, till his Appeal is finally disposed of;

- iii) 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;

iv) 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 applicant's bail.

8 The Applications are accordingly disposed of.

9 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.