

nsc.

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

***CRIMINAL INTERIM APPLICATION NO.682 OF 2021
IN
CRIMINAL APPEAL NO.171 OF 2021***

Durlabh @ Dilip Kanji Jethwa ...Applicant/Appellant
Versus
The State of Maharashtra and Anr. ...Respondents

Mr. Rahul Arote, for the Applicant/Appellant.

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

PSI – Rathod, Ghatkopar Police Station, is present.

CORAM : REVATI MOHITE DERE, J.

DATE : 10th MARCH, 2021

P.C. :

1. Pursuant to the order dated 1st March 2021, the learned counsel for the applicant has filed an affidavit stating therein, that the respondent No.2 has been served. The said affidavit is taken on record. Learned APP also on instructions informs that the concerned officer has informed the respondent No.2 of today's date. He submits that the respondent No.2 has not given any statement whether she intends to engage an advocate or whether an advocate should be appointed on her behalf to espouse her cause.

2. Considering the aforesaid, Ms. Savita Yadav is appointed as an *Amicus Curiae* to espouse the cause of the respondent No. 2 in the said matter.

3. Heard learned counsel for the parties.

4. By this application, the applicant seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of the aforesaid appeal.

5. The applicant has been convicted by the learned Special Judge under POCSO Act, Greater Mumbai in POCSO Special Case No. 250 of 2017, vide Judgment and Order dated 1st February 2021, for the offences punishable under Section 354 of the Indian Penal Code and under Sections 8 and 12 of Protection of Children from Sexual Offences Act, and has been sentenced to suffer rigorous imprisonment for 3 years and to pay fine of Rs.5,000/-, in default, to suffer simple imprisonment for 6 months. The fine amount is to be paid as compensation to the victim, after appeal period is over.

6. Perused the papers. It is not in dispute that the applicant was on bail pending trial and that he has not abused or misused the liberty granted to him. It is also not in dispute that the applicant's sentence was suspended post his conviction to enable him to file the aforesaid appeal. The Appeal has been admitted by this Court vide order dated 1st March, 2021 and the same is not likely to come up for the hearing in the immediate near future. The sentence awarded is a short term sentence.

7. Considering the aforesaid, the application is 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 local 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 bail.

8. The Application is allowed in the aforesaid terms and is accordingly disposed of.

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

10. Learned Counsel Ms. Savita Yadav's appearance/name be shown on board, on behalf of the respondent No.2, whenever the aforesaid appeal is listed.

REVATI MOHITE DERE, J.