

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

**CRIMINAL APPEAL NO. 380 OF 2021
WITH
INTERIM APPLICATION NO. 1278 OF 2021
IN
CRIMINAL APPEAL NO.380 OF 2021**

Dipak Prakash Mene Applicant

v/s.

The State of Maharashtra and anr. Respondents

Mr. Satish B. Yadav i/b. Ms. Shital Turakhia for the Applicant.

Mr. S.V. Gavand, APP for the State.

Mrs. Farhana Shah for Respondent No.2.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 16th NOVEMBER, 2021.

P. C. :-

ORDER IN CRIMINAL APPEAL NO.380 OF 2021 :-

. Heard. **Admit.** Call for the record and proceedings. Mr. S.V. Gavand, learned APP waives service on behalf of Respondent No.1 and Mrs. Farhana Shah, learned counsel waives service on behalf of Respondent No.2. Paper book to be filed within a period of six months.

ORDER IN INTERIM APPLICATION NO.1278 OF 2021 :-

2. This is an Application under Section 389 of Cr.P.C. filed by the

aforesaid Applicant seeking suspension of substantive sentence imposed by judgment dated 06/02/2021 in Special POCSO Case No.289/2016. By the impugned judgment, the learned Special Judge under P.O.C.S.O. Act, Greater Bombay has held the Applicant guilty of offence under section 10 of Protection of Children from Sexual Offences (POCSO) Act, 2012 and sentenced him to undergo rigorous imprisonment of five years with fine of Rs.10,000/- in default to undergo simple imprisonment for three months. The Applicant has also been held guilty of offence under section 354-B of the Indian Penal Code and sentenced to undergo rigorous imprisonment for three years with fine of Rs.1,000/- in default to undergo simple imprisonment for 15 days.

3. Heard Mr. Satish Yadav, learned counsel for the Applicant, Mr. S.V. Gavand, learned APP for the State and Mrs. Farhana Shah, learned counsel for Respondent No.2. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

4. The case of the prosecution in brief is that on 09/04/2016, the Applicant herein kissed and committed act of sexual assault on the

victim who was 12 years of age. The sentence imposed against the Applicant is a short term sentence. The Applicant has already undergone sentence of one year. Considering the large pendency of the cases and also the situation arising from Covid-19 pandemic, it will not be possible to take up the Appeal in immediate future. It is stated that the Applicant was on bail during trial and he has not violated the terms and conditions of the bail. Considering the above facts and circumstances, this is a fit case for suspension of substantive sentence pending hearing of the Appeal. Hence, the Interim Application is allowed on following terms and conditions :-

(a) Execution of substantive sentence imposed against the Applicant by judgment dated 06/02/2021 in Special POCSO Case No.289/2016, is suspended pending hearing of the Appeal ;

(b) The Applicant shall be released on bail on furnishing P.R. Bonds in the sum of Rs.25,000/- with one or two solvent sureties in the like amount to the satisfaction of the Trial Court ;

(c) The Applicant shall report to the Trial Court once in

two months on the day/date specified by the Trial Court, till the Appeal is finally disposed of ;

(d) The Applicant shall keep the trial Court informed of his current address and mobile/contact numbers and/or change of residence or mobile details, if any, from time to time ;

(e) 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 application seeking cancellation of bail.

5. Interim Application stands disposed of accordingly.

PREETI
H
JAYANI
Digitally
signed by
PREETI H
JAYANI
Date:
2021.11.17
14:58:18
+0530

(SMT. ANUJA PRABHUDESSAI, J.)