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

**CRIMINAL INTERIM APPLICATION NO.1297 OF 2021
IN
CRIMINAL APPEAL NO. 391 OF 2021
WITH
CRIMINAL APPEAL NO. 391 OF 2021**

Vasim Mohammad Asrar Qureshi ...Applicant/Appellant
Versus
The State of Maharashtra and Anr. ...Respondents

Ms. Anjali Awasthi, for the Applicant/Appellant.

Mr. P. H. Gaikwad-Patil, A.P.P for the Respondent No.1 – State.

Ms. Devyani Hemant Kulkarni, appointed Advocate for the Respondent No.2.

CORAM : REVATI MOHITE DERE, J.

DATE : 11th JUNE, 2021

(THROUGH VIDEO CONFERENCING)

P.C. :

1. Heard learned counsel for the parties.
2. By this application, 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 11th March 2021, passed by learned Designated Judge under Protection of Children from Sexual Offences Act, 2012 for Greater Bombay, in POCSO Special Case No. 463 of 2018 has been convicted and sentenced as under:-

- for the offence punishable under Section 376(2)(f) of Indian Penal Code, to suffer rigorous imprisonment for 10 years and to pay fine of Rs.25,000/-, in default of payment of fine, to suffer rigorous imprisonment for 6 months;
- for the offence punishable under Section 8 of Protection of Children from Sexual Offences Act, to suffer rigorous imprisonment for 3 years and to pay fine of Rs.5,000/-, in default of payment of fine, to suffer rigorous imprisonment for 1 month.
- As the applicant was sentenced under Section 376(2)(f) of Indian Penal Code, no separate sentence was imposed for the offence punishable under Section 4 of Protection of Children from Sexual Offences Act, having regard to Section 42 of Protection of Children from Sexual Offences Act.

4. Learned Counsel for the applicant submits that not only have the prosecutrix and her parents turned hostile, but even the medical evidence does not support the prosecution case. Learned Counsel submits

that neither the doctor nor the medical case papers of the prosecutrix support the prosecution case. Learned Counsel relied on the evidence of the prosecutrix and her parents and the evidence of the doctor i.e. PW 9 – Dr. Madhura Kelkar, in support of her submission.

5. Learned APP as well as the learned appointed advocate for the respondent No.2 oppose the application. They however, do not dispute the fact, that the witnesses i.e. the prosecutrix and her parents having turned hostile. They, however, submit that the DNA report shows the complicity of the applicant in the alleged offence.

6. Having heard the learned counsel for the parties and having perused the evidence on record, it appears that the prosecutrix as well as her parents have turned hostile. Be that as it may, apart from the same, the evidence of PW 9 – Dr. Madhura Kelkar shows that the prosecutrix had given detailed history of the alleged sexual assault on her and had stated that the applicant had taken her forcefully in a truck/tempo filled with gunny bags, undressed her and had forcibly inserted his finger in her private part, followed by forceful peno vaginal intercourse, three episodes. She has stated that although the prosecutrix was examined within 8 hours of the incident, no evidence of external injuries on her body were seen nor the

general local examination revealed any abnormality nor any injuries to her private part. The applicant is in custody since 2018. Having considered the evidence on record, the applicant has *prima facie*, made out a case for suspension of his sentence and enlargement on bail, pending the hearing and final disposal of his appeal.

7. Accordingly, 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.20,000/- with one or two local sureties in the like amount;
- ii) The Applicant shall not enter the jurisdiction of New Gautam Nagar, Govandi, where the prosecutrix and her family resides, till the hearing and final disposal of his Appeal;
- iii) The Applicant shall not contact/threaten/intimidate the prosecutrix and her family, witnesses or any person concerned with the case;
- iv) 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;

v) 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;

vi) 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. Interim Application is allowed in the aforesaid terms and is accordingly disposed of.

9. Criminal Appeal No.391 of 2021, to be listed for final hearing and disposal after receipt of paper-book.

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

REVATI MOHITE DERE, J.