

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

**INTERIM APPLICATION NO.1342 OF 2021
IN
CRIMINAL APPEAL NO.420 OF 2021
WITH
CRIMINAL APPEAL NO.420 OF 2021**

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...Applicant

Versus

The State of Maharashtra and Anr.

...Respondents

....

Mr. Vishal G. Salvi for the Applicant.

Mr. P.H. Gaikwad, APP for Respondent-State.

Mrs. Megha Bajoria for Respondent No.2.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 24th NOVEMBER, 2021.

P.C.:-

This is an application under Section 389 of the Code of Criminal Procedure, 1973 for suspension of substantive sentence imposed by judgment dated 16/03/2020 passed by learned Judge, Special Court, Mangaon, District-Raigad in Special POCSO Case No.11 of 2018 and to enlarge the Applicant on bail. By the impugned judgment, the learned Judge has held the Applicant guilty of offence punishable under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and sentenced him to undergo rigorous imprisonment for a period of 7 years with fine of Rs.25,000/- i/d to

undergo further simple imprisonment for the period of six months.

2. Heard Mr. Vishal Salvi, learned counsel for the Applicant, Mr. P.H. Gaikwad, learned APP for Respondent No.1-State and Mrs. Megha Bajoria, learned counsel for Respondent No.2. I have perused the records and considered the submissions advanced by learned counsel for the respective parties.

3. It was alleged that the Applicant had subjected the victim girl of 16 years to penetrative sexual assault. Upon considering the evidence on record, the learned Judge has held the Appellant guilty and has sentenced him to undergo imprisonment for a period of 7 years.

4. In ***Kiran Kumar vs. State of M.P. (2001) 9 SCC 211*** the Appellant was convicted for offence under Section 460, 376, 325 and 506 of the IPC and maximum sentence imposed on him was imprisonment for a period of 7 years. His application for suspension of sentence was rejected by the High Court. While setting aside the said order, the Apex Court referred to the decision in ***Bhagwan Rama Shinde Gosai vs. State of Gujrat (1999) 4 SCC 421*** and held that when the person is convicted and sentenced to a short term imprisonment,

the normal rule is that when the appeal is pending the sentence should be suspended and rejection is only by way of exception. It is further observed that if the short term is alleged to run out during the pendency of appeal, the appeal itself will become for all practicable purposes infructuous.

5. The appeal is admitted and considering the large pendency of the cases, the appeal is not likely to come up for hearing in the immediate future. It is also stated that the Appellant was on bail during the pendency of trial and has not misused the liberty. In view of the said judgment and considering the fact that the Applicant has been sentenced imprisonment for 7 years this is a fit case for suspension of sentence imposed on the Applicant pending disposal of the appeal on merits. Hence, the application is allowed on the following terms and conditions:-

- (i) Substantive sentence imposed against the Applicant vide judgment dated 16/03/2020 in Special POCSO Case No.11 of 2018 is suspended pending disposal of the appeal;
- (ii) The Applicant is ordered to be released on bail on furnishing PR bonds in the sum of Rs.25,000/- with one or two sureties in the like amount.

- (iii) The Applicant shall report to the Trial Court once in three months on the day/date specified by the Trial Court, till the appeal is finally disposed of.
- (iv) 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.
- (v) 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.

6. The application stands disposed.

(SMT. ANUJA PRABHUDESSAI, J.)