

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

**INTERIM APPLICATION NO. 1460 OF 2020
IN
CRIMINAL APPEAL NO.492 OF 2020**

Amir Ismail Khan ... Applicant/
Appellant

Versus

The State of Maharashtra & Anr. ... Respondents

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Mr. Zahid A. Qureshi, Advocate for the Applicant/Appellant.

Mr. Y. Y. Dabake, APP for the Respondent No.1 – State.

Mr. Surel S. Shah, Advocate for Respondent No.2 – Complainant.

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CORAM : PRAKASH D. NAIK, J.

DATE : 3rd AUGUST, 2021.

PER COURT:

1. This is an application for suspension of sentence and grant of bail, pending the appeal preferred by the applicant challenging the judgment and order dated 23rd October, 2020 passed by Sessions Judge, Pune.

2. The applicant is convicted for the offence punishable under Section 376(2)(i) of Indian Penal Code (for short “IPC”) and Sections 3 & 4 of Protection of Children from Sexual Offences Act, 2012 (for short ‘POCSO Act’). He sentenced to suffer 10 years

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rigorous imprisonment.

3. Learned counsel for the applicant submitted that during the pendency of trial applicant/appellant was on bail and he has not misused the facility of bail. The applicant has good case on merits. The applicant is young boy aged about 19 years. The victim was aged around 16 years. The love letters written by victim to the applicant were adduced in evidence. It is submitted that the defence had also seriously doubted the allegations of sexual assault. Learned counsel for the applicant pointed out the evidence of PW-5 Dr. Arun Ambadkar, wherein it was stated that these kind of injuries are possible due to insertion of any other foreign object other than male part and in this case it may be possible that said injuries are caused by insertion of foreign object. The prosecution had suppressed that victim and accused were in love relationship. The accused was acquitted for offence under Section 363 of IPC. The evidence suffers from omission and contradiction.

4. Learned APP submitted that there is no reason to doubt the case of the complainant. The victim was minor. She was sexually assaulted. It was not the case of sexual relationship.

5. Learned counsel for the victim/complainant reiterated the submissions advanced by learned APP. It is submitted that the

victim was minor girl. She was less than 16 years of age. It is not the case of consensual sexual relationship. The evidence of witnesses is required to be appreciated at final hearing of appeal. At the most hearing of appeal be expedited.

6. The applicant is aged about 19 years. During the pendency of trial, he was granted bail vide order dated 16th April, 2016 passed by learned Additional Sessions Judge, Pune. The defence has brought on record, the letters exchanged between the parties which indicate the nature of relationship between the victim and the applicant. In the cross examination, the victim has stated that prior to the incident there was friendship between victim and accused. There was love affair. I have perused evidence of witnesses including medical officer. Considering the factual aspects and the evidence adduced before the trial Court, and also considering the fact that the applicant/appellant was on bail during the trial, case for suspension of sentence is made out.

7. Hence, I pass the following order:

ORDER

- (i) Interim Application No. 1460 of 2020 is allowed;
- (ii) During pendency of Criminal Appeal No. 492 of 2020, Sentence of imprisonment awarded by learned Additional

Sessions Judge, Pune, vide Judgment and order dated 23rd October, 2020 passed in Special Sessions Case No.359 of 2015 is suspended and the applicant is directed to be released on bail on executing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

(iii) Interim Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)