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

***CRIMINAL APPLICATION NO.1151 OF 2019
IN
CRIMINAL APPEAL NO.455 OF 2019***

Tukaram Sadanand Palav	...Applicant
Versus	
The State of Maharashtra and Anr.	...Respondents

Mr. Salim Ahmed Shaikh, for the Applicant.

Ms. S. V. Sonawane, A.P.P for the Respondent No.1 – State.

CORAM : REVATI MOHITE DERE, J.

DATE : 16th FEBRUARY, 2021

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 the aforesaid appeal.
3. The applicant vide Judgment and Order dated 17th January 2019, passed by learned Additional Sessions Judge, Sessions Court,

Greater Mumbai, in POCSO Special Case No.538 of 2015, has been convicted and sentenced as under:-

- for the offence punishable under Section 6 of the Protection of Children from Sexual Offences Act, to suffer rigorous imprisonment for 10 years and to pay fine of Rs.1,00,000/- in default of payment of fine, to suffer further simple imprisonment for 6 months ;
- for the offence punishable under Section 363 of the Indian Penal Code, to suffer rigorous imprisonment for 3 years and to pay fine of Rs.5,000/- in default of payment of fine, to suffer further simple imprisonment for 1 month.

Both the sentences were directed to run concurrently

4. Learned Counsel for the applicant submits that the applicant is in custody for almost more than 5 ½ years i.e. since 26th August 2015 and that the appeal is not likely to come up for the hearing in the immediate near future. He submits that a perusal of the evidence on record will show that the relations, if any, between the applicant and the prosecutrix were consensual in nature. He submits that the prosecution has not proved that the prosecutrix was a minor i.e. 17 years 8 months, at the relevant time. He submits that the prosecutrix herself has disclosed her age as 19 years to the doctor, when she had gone for her medical examination in connection with

her pregnancy. He submits that the evidence on record will show that the prosecutrix would call the applicant home and that the relations were consensual. He further submits that the evidence also shows that the applicant and the prosecutrix were going to get married, however, as the applicant refused to marry the prosecutrix, a complaint/FIR was lodged as against the applicant.

5. Learned APP opposes the application.

6. Perused the papers. The aforesaid appeal has been admitted on 23rd April 2019. The evidence on record shows that there was some relationship between the applicant and the prosecutrix. The evidence of PW 3 - Dr. Bhavin Desai shows that the prosecutrix had disclosed her age as 19 years, when she was admitted in the Nursing Home and had also disclosed her name as 'X' Tukaram Palav. It also appears that the applicant and the prosecutrix had disclosed that they were married when they visited the Nursing Home. The applicant is in custody since 26th August 2015 for more than 5 ½ years. The applicant has no antecedents. The Appeal is not likely to come up for the hearing in the immediate near future.

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.25,000/- with one or two 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 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;

v) The fine amount to be deposited by the applicant, within 12 weeks from today.

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.

REVATI MOHITE DERE, J.