

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

**CRIMINAL APPEAL NO.227 OF 2021
WITH
INTERIM APPLICATION NO.2701 OF 2021
IN
CRIMINAL APPEAL NO.227 OF 2021**

Vinod Kumar Lalta Prasad Jaiswal ...Appellant/Applicant
Versus

The State of Maharashtra and Anr. ...Respondents

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Mr. Sunil Kumar with Mr. V.P. Tare and Mr. Jitendra Yadav i/b. M/s. Kumar and Associates for the Appellant.
Ms Grishma Lad (appoint advocate) for Respondent No.2.
Mr. P.H. Gaikwad, APP for Respondent No.1-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 15th NOVEMBER, 2021.

P.C.:-

CRIMINAL APPEAL NO.227 OF 2021:

Heard. Admit.

2. Mr. P.H. Gaikwad, learned APP waives service on behalf of Respondent No.1-State and Ms Grishma Lad, learned counsel waives service on behalf of Respondent No.2. Call for the record and proceedings. Paper book to be filed within a period of six months.

INTERIM APPLICATION NO.2701 OF 2021:-

3. This is an application under Section 389 of the Code of Criminal Procedure, 1973 for suspension of substantive sentence imposed vide judgment dated 11/01/2021 passed by learned Special Judge under POCSO Act, Greater Mumbai in POCSO Special Case No.539 of 2016 and to release the Applicant on bail.

4. By the impugned judgment, the learned Judge held the Applicant guilty of offences punishable under Sections 6 and 8 of the Protection of Children from Sexual Offences Act, 2012 (POCSO) and Sections 363 and 376 (1) of the IPC. He has been sentenced to undergo rigorous imprisonment for 10 years with fine of Rs.15,000/- i/d. to undergo rigorous imprisonment for three months for offence under Section 6 of the POCSO and rigorous imprisonment for three years and fine of Rs.5000/- i/d. to undergo rigorous imprisonment for two months for offence under Section 8 of the POCSO and Section 363 of the IPC. No separate sentence is awarded in respect of the offence under Section 376(1) of the IPC in view of Section 42 of the POCSO Act.

5. Mr. Sunil Kumar, learned counsel for the Applicant states that relationship between the Applicant and the victim was consensual. The Applicant was on bail during the trial and that he has not violated

conditions of the bail.

6. Ms Grishma Lad, learned counsel for Respondent No.2 states that the Applicant is the maternal uncle of the victim. She states that the evidence on record proves that the victim was below 18 years of age and hence a child within the meaning of Section 2(d) of the POCSO Act. She states that there is prima facie material and evidence on record to show that the Applicant had sexual relationship with his niece, a child within the meaning of Section 2(d) of the POCSO. She states that gravity of the offence does not justify suspension of sentence and enlargement of the Applicant on bail.

7. Perused the records and considered the submissions advanced by learned counsel for the respective parties.

8. The records reveal that the Applicant is the maternal uncle of the victim. Prosecution has placed on record birth certificate of the victim, which shows that as on the date of the incident, the victim was 16 years of age. Hence, a child within the meaning of Section 2(d) of the POCSO. The evidence of the victim reveals that she and the Applicant stayed together for about a month and had sexual intercourse with each other during this period. The victim being a child

the physical relations, though consensual constitutes an offence of penetrative sexual assault, which is punishable with imprisonment for a term not less than 10 years but which may extend to 10 years.

9. The material on record indicates that the Applicant is involved in committing a serious offence. The fact that the Applicant was on bail during the trial cannot per se be a ground for suspension of sentence. The Applicant having failed to make out a case for suspension of sentence or enlargement on bail, the application is dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)