

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

**INTERIM APPLICATION NO. 2778 OF 2021
IN
CRIMINAL APPEAL NO. 931 OF 2021**

Shivnath Adinath Tupe Applicant
v/s.
The State of Maharashtra and anr. Respondents

Mr. Yash Raiyani i/b. Ms. Swapna Kode for the Applicant.
Mr. N.B. Patil, APP for the State.
Mrs. Megha Bajoria for Respondent No.2 (appointed).

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 25th NOVEMBER, 2021.

P. C. :-

. Respondent No.2 present in person requests for an advocate from Legal Aid Panel. Ms. Megha Bajoria, learned advocate is appointed to represent Respondent No.2.

2. By this Application filed under section 389 of Cr.PC., the Applicant has sought suspension of substantive sentence imposed by judgment dated 21/10/2021 in Special Case (POCSO) No.132/2017. By the impugned judgment, the learned Additional Sessions Judge, Pune has held the Applicant guilty of offence punishable under Section 354 of the Indian Penal Code and section 8 of the Protection of

Children from Sexual Offences (POCSO) Act, 2012 and sentenced him to undergo rigorous imprisonment for three years with fine of Rs.10,000/- in default to undergo imprisonment for one year in respect of offence under section 8 of POCSO Act. No separate sentence is passed in respect of offence under section 354 of IPC.

3. Heard Mr. Yash Raiyani, learned counsel for the Applicant, Mr. N.B. Patil, learned APP for the State and Ms. Megha Bajoria, learned counsel for Respondent No.2. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

4. Ms. Bajoria, learned counsel for Respondent No.2 states that while the Applicant was on bail, he had interfered with the victim and she had lodged NC complaint. She has placed on record NC complaints dated 17/05/2018 and 21/04/2019. It is to be noted that prosecutrix has not taken any steps for cancellation of bail on the said ground. No private complaint was filed. Hence, bail cannot be rejected on the basis of NC complaints filed in the year 2018-2019.

5. The sentence imposed is of short term imprisonment. The Appeal

is admitted. Several other cases are pending before the Court. Considering the large pendency of the cases and also the situation arising from Covid-19 pandemic, it will not be possible to take up the Appeal in immediate future. Moreover, the Applicant was on bail during trial. He has not misused the liberty. Considering the above facts and circumstances so also the nature of the accusations and evidence in support thereof, this is a fit case for suspension of substantive sentence pending hearing of the Appeal. Hence, the Interim Application is allowed on following terms and conditions :-

(a) Substantive sentence imposed against the Applicant by judgment dated 21/10/2021 in Special Case (POCSO) No.132/2017, is suspended pending hearing of the Appeal ;

(b) The Applicant shall be released on bail on furnishing P.R. Bonds in the sum of Rs.10,000/- with one or two solvent sureties in the like amount to the satisfaction of the Trial Court ;

(c) The Applicant shall report to the Trial Court once in two months on the day/ date specified by the Trial Court, till the Appeal is finally disposed of ;

(d) The Applicant shall not interfere with the victim in any manner.

(e) The Applicant shall keep the trial Court informed of their current address and mobile/contact numbers and/or change of residence or mobile details, if any, from time to time ;

(f) 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 application seeking cancellation of bail.

6. Interim Application stands disposed of accordingly.

PREETI
H
JAYANI
Digitally
signed by
PREETI H
JAYANI
Date:
2021.11.30
14:31:01
+0530

(SMT. ANUJA PRABHUDESSAI, J.)