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

**INTERIM APPLICATION NO.1501 OF 2019
IN
CRIMINAL APPEAL NO.87 OF 2021
WITH
CRIMINAL APPEAL NO.87 OF 2021**

Kalpesh Wadilal Shah ...Applicant

Versus

The State of Maharashtra ...Respondent

....

Mr. Vivek Arote i/b. Mr. Ashish Satpute for the Applicant.

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

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 18th NOVEMBER, 2021.

P.C.:-

INTERIM APPLICATION NO.1501 OF 2019:-

By this application filed under Section 389 of the Code of Criminal Procedure, 1973, the Applicant has sought suspension of substantive sentence imposed vide judgment dated 08/01/2019 passed by the learned Additional Sessions Judge-1, Vasai in POCSO Special Case No.42 of 2016 and to enlarge the Applicant on bail.

2. 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 and sentenced

to undergo simple imprisonment for 10 years and to pay fine of Rs.10,000/- i/d. to suffer simple imprisonment for six months.

3. Heard Mr. Vivek Arote, learned counsel for the Applicant and Mr. P.H. Gaikwad, learned APP for Respondent -State. Perused the records.

4. The material on record prima facie indicates that the victim boy was below 18 years of age and hence a 'child' within the meaning of Section 2(d) of the POCSO Act. The evidence of the victim boy prima facie reveals that the Applicant, who was residing in the same locality had taken him to his house, shown obscene video clips and subjected him to carnal and oral intercourse. The material on record prima facie indicates that the Applicant herein had subjected the minor to penetrative sexual assault. Considering the nature of the offence and material in support thereof this is not a fit case for suspension of sentence and releasing the Applicant on bail. Hence, the application is dismissed.

CRIMINAL APPEAL NO.87 OF 2021:-

5. Leave is granted to the Appellant to implead the complainant as Respondent No.2. Registry thereafter to issue notice to

Respondent No.2, returnable on **29/11/2021**. Learned APP also to make an endeavour to intimate next date of hearing to Respondent No.2-complainant /victim.

6. Stand over to **29/11/2021**.

(SMT. ANUJA PRABHUDESSAI, J.)