

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 1415 OF 2019
IN
CRIMINAL APPEAL NO. 1618 OF 2019**

Nilesh Durgaji Tandel	...Applicant
Versus	
State of Maharashtra and Anr.	...Respondents

Mr. Amit Mane for the Applicant.

Mrs. S.V.Sonawane, A.P.P for the Respondent No.1-State.

Ms. Ashesha Chheda for the Respondent No.2 and 3.

CORAM : REVATI MOHITE DERE, J.
DATE : 9th MARCH, 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 his appeal.
3. Learned Counsel for the applicant submits that the applicant is in custody for almost 3 ½ years and that the applicant has undergone more

than 50% of the sentence, awarded by the Trial Court. He submits that if the applicant is enlarged on bail, he will not contact his daughters i.e. victim girls nor will he seek their custody.

4. Learned APP as well as learned Counsel for the respondent No.2 oppose the application.

5. Perused the papers, in particular, para Nos. 23 and 24 of the impugned judgment and order dated 25/09/2019 passed by the learned Special Judge (POCSO), Greater Bombay. For the reasons set out in para Nos.23 and 24 of the impugned judgment and order, the learned Judge has acquitted the appellant of the offence punishable under Sections 376(f) (I) (j) and (k); and under Section 6 of the Protection of Children from Sexual Offences Act, 2012. It appears that the learned Judge has relied on the medical case papers in coming to the said conclusion.

6. It is not in dispute that the maximum sentence imposed on the appellant is 5 years for the offence punishable under Section 10 of the Prevention of Children from Sexual Offences Act, 2012; and that the appellant has undergone more than 3 ½ years of imprisonment. It appears that the appeal against acquittal filed by the State of Maharashtra, is yet to

be heard.

7. Be that as it may, considering what is stated aforesaid, application is allowed. The appellant's statement made through his counsel, that the appellant would not meet/contact his daughters nor will seek their custody, is accepted.

8. 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.15,000/- with one or two local sureties in the like amount;
- ii) The applicant shall report to the concerned Police Station on the first Saturday of every month from 10.00 a.m. to 12.00 noon, until further orders.
- iii) The applicant shall not contact his daughters nor will seek their custody till his appeal is finally disposed of;

- iv) The applicant shall keep the trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time;
- v) The fine amount to be deposited by the appellant within six weeks from the date of his release, if not already deposited.
- vi) 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 applicant's bail.

8 The application is accordingly disposed of on the aforesaid terms.

9 The High Court Legal Services Committee, Mumbai to pay the fees to Ms. Ashesha Chheda, who has espoused the cause of respondent Nos.2 and 3, as per rules.

10. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.