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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION [APPA] NO. 224/2020
IN CRIMINAL APPEAL NO. 198/2020.

Ishwar Vinod Virshid

-VERSUS-

State of Maharashtra

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri P.V. Navlani, Advocate for the Applicant/Appellant.
Shri S.D. Sirpurkar, A.P.P. for the Respondent.

CORAM : VINAY JOSHI, J.

DATE : JANUARY 04, 2021.

Heard.

2. A prayer has been made for suspension of execution of sentence in terms of Section 389[1] of the Code of Criminal Procedure. The accused was convicted by the trial Court for the offence punishable under Section 377 of the Indian Penal Code and Sections 4 and 12 of the Protection of Children from Sexual Offences Act. The maximum sentence imposed by the trial Court is to undergo rigorous imprisonment for 7 years along with total

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fine of Rs.21,000/-.

3. The learned counsel for the applicant has straneously argued that the evidence is totally inadequate to fasten the guilt on the accused. Primely he has canvassed that there are strong chances of false implication since the enimical terms have come on record. He would submit about improbabilities of the victims accompanying stranger at distant place without any resistance. He has also attracted my attention to the plea of alibi raised before the trial Court.

4. On the other hand, the learned A.P.P. has resisted to grant of benefit of suspension by stating that the offence is of serious nature. The victim is a minor boy who was sexually exploited by the accused. Moreover, it is submitted that the evidence of victim specifically spells out the act of the accused.

5. With the assistance of both the learned counsel, I have gone through the available record. It is pointed out that though the incident occurred

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on 26.01.2019, FIR has been lodged after four days. It is the domain in the appeal to examine whether the delay has been sufficiently or plausibly explained or not. The learned counsel for the appellant has invited my attention to paragraph no.2 of the evidence of the informant i.e. mother of the victim. She has stated that the victim [her son] had disclosed about the occurrence to her after 4-5 days from the incidence.

6. During cross examination, it has been brought on record that the accused had assaulted the son of informants' sister in law, and thereafter, the victim disclosed the things. The said portion is pointed out to show the enmity and possibility of false implication. Besides that certain omissions and improvements are also pointed out.

7. In connection with the said offence, the appellant/accused was arrested on 31.01.2019 and till date he is in jail.

8. Having over all view of the matter, the

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submission of learned counsel for the appellant that he has arguable points, cannot be denied. The appellant is in jail since last two years. He has not been sentenced for life imprisonment, but, fixed term has been imposed. The appeal will take its own time for hearing. The applicant has made out a case for suspension of execution of substantive sentence, hence, the same is suspended till the disposal of the present appeal. In the meanwhile, the applicant/appellant be released on bail on his furnishing P.R. bond in the sum of Rs.15,000/- with one surety in the like amount.

9. It is informed that the applicant has not deposited the fine amount. Hence, the above order of suspension of execution of sentence would come into force after the applicant/appellant deposits the entire fine amount in the trial Court. The trial Court shall ensure due compliance, before executing this order. Criminal Application is accordingly allowed and disposed of.

JUDGE

Rgd.