

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1865 OF 2022
IN APEAL/429/2022

VENKATESH @ PAPPU S/O RAMKISAN PUYED
VERSUS
THE STATE OF MAHARASHTRA AND ANR

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Mr. S. D. Munde h/f Mr. S. S. Gangakhedkar, Advocate for applicant.
Mr. S. P. Deshmukh, APP for the respondent No.1 – State.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 23.06.2022

ORDER :-

. Present application has been filed for suspending the sentence imposed on the applicant/appellant in Special (POCSO) Case No.31 of 2015 by learned Extra Additional Sessions Judge/Special Judge (POCSO) Court, Nanded on 26.04.2022. The applicant/appellant has been sentenced thus :-

. The accused/applicant is held guilty for the offence punishable under Section 354-B of the Indian Penal Code and under Section 7 punishable under Section 8 of the Protection of Children from Sexual Offences Act (hereinafter referred to as the “POCSO Act”) and thereby sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.2,000/- (Rs. Two Thousand only).

In default to suffer simple imprisonment for fifteen days for the offence under Section 7 punishable under Section 8 of the POCSO Act.

2. Heard learned Advocate Mr. S. D. Munde holding for learned Advocate Mr. S. S. Gangakhedkar for the applicant and learned APP Mr. S. P. Deshmukh for the respondent No.1 – State.

3. It is to be noted that the charge appears to have been framed against the accused/applicant for the offences punishable under Sections 354-B, 323 of Indian Penal Code and under Section 7 punishable under Section 8 of the POCSO Act, however, after holding the appellant guilty of committing the offence under Section 354-B of Indian Penal Code and under Section 7 punishable under Section 8 of the POCSO Act, sentence has been imposed under the POCSO Act and it is specifically mentioned that no separate sentence has been awarded for the offence punishable under Section 354-B of Indian Penal Code in view of Section 42 of the POCSO Act.

4. Learned Advocate appearing for the applicant/appellant has produced on record the copies of deposition. It appears that in all 9 persons were examined by the prosecution to bring home the guilt of the accused. The applicant/appellant wants to point out the contradictions in the depositions and thereby wants to harp on the credibility of the

witnesses. In view of this as well as the fact that the sentence that has been imposed can be termed as small sentence in view of the decision in ***Kiran Kumar Vs. State of M. P., [(2001) 9 SCC 211]*** as well as the fact that there is less likelihood of taking up the appeal for hearing in the near future, the application deserves to be allowed. Hence, the following order :-

ORDER

- I) The application is hereby allowed.
- II) The substantive sentence imposed on the applicant in Special (POCSO) Case No.31 of 2015 by learned Extra Additional Sessions Judge/Special Judge (POCSO) Court, Nanded on 26.04.2022 is hereby suspended till the hearing and conclusion of Criminal Appeal No.429 of 2022.
- III) The applicant be released on P.R. and S.B. of Rs.15,000/- (Rupees Fifteen Thousand only) each.
- IV) He shall not commit any offence.
- V) The applicant shall remain present before the learned Trial Judge once in six months, till final hearing and disposal of the appeal, commencing from the date he tenders bail papers and thereafter, the Trial Judge to fix dates for his subsequent appearances.

VI) In case of two consecutive defaults on the part of the applicant to remain present before the Trial Court, the Trial Court to inform this Court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicant.

VII) Bail before trial Court.

[SMT. VIBHA KANKANWADI, J.]

scm