

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1943 OF 2022
IN APEAL/440/2022

VAIJINATH ASARAM PANCHAL
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Appellant : Mr. Munde Sandeep D.
APP for Respondent – State : Mr. S. P. Sonpawale
...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 05.07.2022

ORDER :-

. Heard both the sides.

2. Though the learned Advocate for the appellant/applicant has not produced the copies of evidence, it is to be noted that the appellant/applicant has been convicted by the learned Special Judge under POCSO Act, Vaijapur, Dist. Aurangabad in Special (POCSO) Case No.21 of 2018 thus :-

(i) The appellant/applicant has been convicted under Section 235(2) of the Code of Criminal Procedure for the offence punishable under Section 451 of Indian Penal Code and thereby sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.1000/-, in default, to suffer simple imprisonment for

fifteen days.

(ii) The appellant/applicant has been convicted under Section 235(2) of the Code of Criminal Procedure for the offence punishable under Section 354 of Indian Penal Code and thereby sentenced to suffer rigorous imprisonment for two years and to pay fine of Rs.1000/-, in default, to suffer simple imprisonment for fifteen days.

3. The judgment would show that the learned Judge has not considered the victim as child within the meaning of Section 2(d) of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the “POCSO Act”). Therefore, conviction is under Indian Penal Code. In view of *Kiran Kumar Vs. State of M. P., [(2001) 9 SCC 211]*, the sentence that has been awarded can be termed as small sentence. It is less likely that the appeal would be taken up for final hearing in the near future and, therefore, 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.21 of 2018 by learned Additional Sessions Judge-1/Special Judge under POCSO Act, Vaijapur, Dist.

Aurangabad on 27.05.2022 is hereby suspended till the hearing and conclusion of Criminal Appeal No.440 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