

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

**INTERIM APPLICATION NO. 352 OF 2022
IN
CRIMINAL APPEAL NO. 83 OF 2022**

Shiva Vantu Jamkar ...Applicant/Appellant
Versus
The State Of Maharashtra And Anr. ...Respondents

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Mr. Aniket Vagal, Advocate for the Applicant/Appellant.

Mr. Mukund Pandya h/f Mr. Yashpal Thakur, Advocate for Respondent
No.2.

Ms. P N. Dabholkar, APP for the Respondent – State.

**CORAM : PRAKASH D. NAIK, J.
DATE : 5th MAY, 2022.**

PER COURT:

1. This is an application for suspension of sentence and grant of bail during the pendency of Criminal Appeal No.83 of 2022. The applicant is convicted for offence punishable under Section 10 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') and sentenced to suffer rigorous imprisonment for 5 years. He is also convicted for offence punishable under Section 12 of POCSO Act and sentenced to suffer rigorous imprisonment for one year. He is further convicted for offences punishable under Sections 354, 354-A and 354-D of Indian Penal Code

2. The case of the prosecution is that the victim girl had visited the market at Colaba along with her friend. The accused followed them. When they entered into the shop, the accused also entered the same shop. The accused then touched the victim inappropriately. The victim informed the incident to her mother. The First Information Report (for short 'FIR') was registered. The accused was arrested on 6th August, 2018. C.C.T.V. footage was collected. The accused was identified.

3. Learned Advocate for the applicant submitted that the applicant was on bail during the trial. He is in custody from 8th October, 2018. While on bail he has not misused the facility of bail.

4. Learned APP and learned Advocate for respondent No.2 submitted that the victim was aged around 10 years. Specific role of outraging modesty has been attributed to the applicant. The identity of the applicant is not disputed. He was identified by the victim.

5. The trial Court has imposed sentence of 5 years. The applicant was on bail during the trial. There is no adverse report about the misuse of facility of bail. The appeal may not reach for hearing immediately. The applicant has urged that, if the accused was identified in the parade and hence there was no need of

playing the C.C.T.V. footage in Court. The prosecution was not sure about the identity of the accused. According to PW-1 and PW-2 they came to know from the Police that one person was arrested and that they were called at Police Station and they noticed that it was not the same person and thereafter the Police had arrested the applicant. The C.C.T.V. footage merely shows that the applicant was following the victim. The record does not indicate that the accused had touched the victim inappropriately.

6. Considering all the aforesaid circumstances, the sentence of imprisonment can be suspended.

7. Hence, I pass the following order:

ORDER

- i. Interim Application No. 352 of 2022 is allowed;
- ii. During the pendency of Criminal Appeal No.83 of 2022, the sentence of imprisonment imposed vide Judgment and order dated 08th October, 2021 passed by learned Special Judge, under POCSO Act, Gr. Mumbai in POCSO Special Case No.553 of 2018 is suspended and the applicant is directed to be released on bail on executing PR. Bond in the sum of Rs.20,000/- with one or more sureties in the like amount;
- iii. The applicant is permitted to furnish cash bail in the sum of Rs.20,000/- for a period of eight weeks in lieu of surety.

iv. The applicant shall not approach the victim and her relatives and shall not cause any harassment to her.

v. The applicant shall attend the trial Court once in six months on first Saturday of the month till the final disposal of the appeal;

vi. In the event, there are two consecutive defaults in attending the trial Court, the said fact may be brought to the notice of this Court and in such eventuality, the prosecution will be at liberty to prefer an application for cancellation of bail.

vii. Interim Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)