

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

**INTERIM APPLICATION NO.639 OF 2022
IN
CRIMINAL APPEAL NO. 189 OF 2022**

Mehboob Sardar Bairagdar ..Applicant/Appellant
Versus
The State of Maharashtra & Anr. ..Respondents

Mr. Karl P. Rustomkhan i/by Mr. Tejas Hilage, Advocate for the Applicant/Appellant.

Mr. Tanveer Khan, Advocate for the Respondent No.2.

Mr. S.V. Gavand, APP for the Respondent – State.

CORAM : PRAKASH D. NAIK, J.

DATE : 28th MARCH, 2022.

PC.

1. This is an application for suspension of sentence and grant of bail during pendency of Criminal Appeal No.189 of 2022.

2. By Judgment and order dated 1st February, 2022, the applicant has been convicted for the offence under Section 354-A of Indian Penal Code (for short “IPC”) r/w Section 12 of Protection of Children from Sexual Offences Act, 2012 (for short “POCSO” Act). He has been sentenced to suffer imprisonment of two years and fine of Rs.20,000/- (Twenty Thousand Only).

3. The case of the prosecution is that, on 28th February, 2020, the victim girls told by the complainant to go to the shop to purchase some articles. They refused to go to the said shop. The victim girls informed stated that they had visited the shop of accused on the previous day and at that time the accused had touched them inappropriately. The complainant took the victim girls to the shop of accused. They identified the accused. On questioning the accused, he was scared and left the shop. First Information Report was registered under Section 354-A IPC and Sections 8 and 12 of POCSO Act.

4. Learned Advocate for the applicant submitted that the sentence imposed by the trial Court is of short term. The applicant was on bail during the trial. The sentence of imprisonment was suspended by trial court on the date of conviction. The applicant was acquitted under Section 8 of POCSO Act. The Appeal may not come up for hearing immediately. The complainant and the victim has turned hostile. The charge was not proved.

5. Learned APP and the learned Advocate for Respondent No.2 submitted that the applicant has been convicted on the basis of

evidence. The trial Court has observed that the prosecution has proved that the accused had touched victims inappropriately.

6. From the evidence it is apparent that the victim and the complainant did not support the prosecution case. The sentence of imprisonment is of two years. The applicant was on bail during the trial. Hence, this application can be allowed.

7. Hence, I pass the following order:-

ORDER

- i.** Interim Application No. 639 of 2022 is allowed;
- ii.** Interim order dated 25th February, 2022 is confirmed;
- iii.** During the pendency of Criminal Appeal No.189 of 2022, the sentence of imprisonment imposed vide Judgment and order dated 1st February, 2022 passed by learned Special (POCSO) Judge, Ichalkaranji in Special POCSO Case No.21 of 2020 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;
- iv.** 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.
- 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.** The applicant shall not approach the victim and shall not cause any harassment to her.
- viii.** The appointment of Advocate representing respondent No.2 shall continue in appeal.
- ix.** The fees of appointed Advocate be paid by the High Court Legal Services Authority as per Rules.
- x.** Interim Application stands disposed accordingly.

(PRAKASH D. NAIK, J.)