

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

**INTERIM APPLICATION NO. 754 OF 2022
WITH
INTERIM APPLICATION NO. 755 OF 2022
IN
CRI. APPEAL NO. 226 OF 2022**

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Ijaj Ahamed @ Furtilla Abdul Matin Ansari ... Applicant/Appellant.

Versus

The State Of Maharashtra & Ors. ...Respondents.

Mr. M. a. Khan, Advocate a/w. Mr. Tajammul Usmal, for the
Applicant/ Appellant.

Mr. Arfan Sait, APP for the State.

Ms. Priyanka Chavan, Advocate for Respondent Nos. 2 & 3.

PSI – M. B. Tawde, Agripada Police Station, is present.

CORAM : PRAKASH D. NAIK, J.

DATE : 6th APRIL, 2022.

P. C. :

1. Both these Applications are preferred, seeking suspension of sentence and grant of bail during the pendency of the Appeal challenging the judgment of conviction dated 27.01.2022 passed by the Special Judge, under the Protection of Children from Sexual Offences Act, 2012 at Mumbai in Special Case No 369 of 2016.

2. The Applicant/Appellant has been convicted for the offence punishable under sections 10 & 12 of the POCSO

Act, under section 354 of the Indian Penal Code and under section 235(2) of the Code of Criminal Procedure. The Applicant has been sentenced to suffer rigorous imprisonment for the year of 5 years and 3 years respectively on each count. No separate sentence of imprisonment has been awarded for the offence punishable under section 354 of the IPC.

3. The case of the prosecution is that the victim girls are minors. While they were playing, the accused had insisted that they should visit his house and all of them were shown pornographic pictures/video by the applicant -accused from his cell phone. It is also alleged that the accused had touched them inappropriately and while leaving caught their hands. The FIR was registered. The Applicant-accused was arrested and chargesheet was filed.

4. Learned Advocate for the Applicant has submitted that the prosecution has examined two victims. The Applicant has been falsely implicated in this case. The sentence is of short term. No act of outraging modesty is attributed to the Applicant. FIR is lodged on the ground of rivalry. There is delay of 12 days in lodging the FIR.

5. Learned APP and learned Advocate representing the Respondent No. 2 & 3 have opposed the prayer for suspension of sentence. It is submitted that the accused has forced the victim girls to visit his house and shown them

pornographic videos. The accused made the victims to sit on the bed and showed obscene movie on his phone. The forensic expert's report with contents of the cell phone supports the prosecution case. The poronographic video / files were found in the Applicants cell phone. The accused had caught hand of victim girls and asked them whether they did not like the video. Although, the prosecution examined two victims, there were four victims. There is sufficient evidence showing the involvement of the Applicant- accused in the crime. Cell phone of the applicant was recovered during the course of investigation. Act attributed to the Applicant is serious.

6. The Appeal preferred by the Applicant has been admitted. The Applicant was on bail during the trial. There is no adverse report that the Applicant had misused facility of bail. The prosecution case is that there were four girls, who had attributed similar role to the Applicant. Two of them were examined. The accused had allegedly shown obscene video to victims. Appeal would not be listed for hearing within short time. The Applicant has challenged the judgment of conviction on various grounds.

7. Considering the aforesaid circumstances, the sentence of imprisonment can be suspended, pending the appeal.

ORDER

i. Interim Application Nos. 754 & 755 of 2022 are allowed.

ii. The sentence of imprisonment imposed vide judgment and order dated 27.01.2022 passed by the Special Judge, under the POCSO Act, in Special Case No. 369 of 2016, is suspended and the Applicant is directed to be released on bail on executing P.R. 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 attend the trial Court once in six months on first Saturday of the month till the final disposal of the Appeal.

v. In the event, there are two consecutive defaults of the Applicant/Appellant 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.

vi. The Applicant shall not approach the victim girls and shall not cause any harassment to them.

vii. Both the Interim Applications are disposed of in the above terms.

(PRAKASH D. NAIK, J.)

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