

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

**INTERIM APPLICATION NO.826 OF 2022
IN
CRIMINAL APPEAL NO.255 OF 2022**

Amit Suresh Aher .. Applicant/Appellant
Versus
State of Maharashtra and Anr. .. Respondents

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Mr.Vikas B. Tapkir a/w. Mrunmayi Khambete, Advocate for the Applicant/Appellant.

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

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CORAM : PRAKASH D. NAIK, J.

DATED : MAY 06, 2022.

P.C. :

The applicant/appellant is seeking suspension of sentence and grant of bail during the pendency of Criminal Appeal No.255 of 2022.

2 The applicant has been convicted for the offence under Section 354 of Indian Penal Code (“IPC”, for short) and Sections 7, 8, 9(n) punishable under Section 10 of Protection of Children from Sexual Offences Act, 2012 (“POCSO Act”, for short), and, sentenced to suffer imprisonment of 5 years and to pay fine of Rs.25,000/-. He was acquitted for the offence punishable under Sections 11 and 12 of POCSO Act.

3 The case of the prosecution is that the victim girls were minor at the time of incident were sexually assaulted by the accused by touching them inappropriately. FIR was registered *vide* C.R.No.159 of 2018.

4 Learned advocate for the applicant/appellant submitted that the sentence of imprisonment is of short term. FIR was lodged on 23rd March, 2018. The prosecution had examined one of the victim girl as P.W.1 and another victim as P.W.5. P.W.1 has not supported the prosecution case and the version of P.W.5, is doubtful. Although, the incident had occurred in 2014, FIR was lodged in 2018. Applicant was on bail during the trial. The facility of bail has not been misused. The applicant/appellant is in custody from the date of conviction.

5 Learned APP submitted that P.W.5 was aged around 14 years at the time of incident. The applicant-accused was supporting the victim and her mother. Victims and their mother were under influence of accused. Hence, the incidents were not reported on account of fear. The victims were looked-after by the accused by providing financial support. All these factors had effected in not registering the offence immediately after the incidents. There is no reason to doubt the version of P.W.5.

6 Learned advocate for respondent no.2 also made similar submissions. He submitted that the age of the victim is required to be considered. There was fiduciary relationship between the applicant and the victim girls. On account of the circumstances prevailing, the incident could not be reported immediately.

7 There are two victims in the incident. One of the victim has not supported the prosecution case. The other victim is P.W.5. The incident is of 2014 and the FIR lodged in 2018. The mother of P.W.5, is not examined. The sentence is of short term. Considering the aforesaid aspects, the sentence can be suspended.

8 Hence, I pass the following order:

:: ORDER ::

- (i) Interim Application No.826 of 2022, is allowed;
- (ii) The sentence of imprisonment imposed vide judgment and order dated 3rd January, 2022, passed by the Extra Joint Additional Sessions Judge, Pune, in Special (POCSO) Case No.262 of 2018, is suspended and the applicant/appellant 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) Applicant/appellant is permitted to furnish cash bail security of Rs.20,000/-, for a period of eight weeks, in lieu of surety;
- (iv) Applicant/appellant shall attend the trial Court once in six months on first Saturday of the month, till the disposal of Appeal;
- (v) In the event there are two consecutive defaults in attending the trial Court, the said fact may be brought to notice of this Court and the prosecution is at liberty to move an application for cancellation of bail;
- (vi) Applicant/appellant shall not approach the victim girls and shall not cause any harassment to them;
- (vii) Interim Application No.826 of 2022, stands disposed of accordingly.

(PRAKASH D. NAIK, J.)