

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****INTERIM APPLICATION NO. 1340 OF 2022****IN****CRIMINAL APPEAL NO. 429 OF 2022**

Laxman Walya Tandel

... Applicant/Appellant

V/s.

The State of Maharashtra & Anr.

... Respondents

Ms.Anjali Patil for Applicant/Appellant.

Mr.R.M. Pethe, A.P.P. for Respondent No.1-State.

Ms.Seema Singh, Appointed Advocate to represent Respondent No.2.

CORAM : A.S. GADKARI, J.**DATE : 4th July 2022.****PC. :**

1. This is an application for suspension of sentence and releasing the Applicant on bail.
2. Applicant is convicted under Section 354 of the Indian Penal Code (for short, 'I.P.C.') and under Section 10 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'P.O.C.S.O. Act') and is directed to further suffer maximum rigorous imprisonment of five years and to pay a total fine of Rs.30,000/- by learned Special Judge under P.O.C.S.O. Act, Greater Bombay, by its Judgment and Order dated 12th April 2022.

3. Learned Advocate for Applicant submitted that, the Applicant is suffering from chronic liver cirrhosis and was taking treatment at Mumbai in a hospital of his choice. She submitted that, even the medical condition of the Applicant in jail is not satisfactory, which fact can be discern from the Affidavit dated 26th June 2022 filed by the Chief Medical Officer, Nashik Road Central Prison. She further submitted that, the Applicant was on bail during the pendency of the Trial and there is no report of breach of the conditions imposed upon him. She therefore submitted that, as the sentence imposed upon the Applicant being a short terms sentence be suspended and he may be released on bail during the pendency of the Appeal.

4. Perusal of record indicates that, it is the allegation against the Applicant that, on 18th February 2017 in afternoon at about 2:00 pm, Applicant called victim girl, who was aged about 10 years on the date of incident in his house and had kissed her on her lips and hugged her. The said fact was told by the concerned victim on the next day i.e. 19th February 2017 to Respondent No.2 i.e. mother of victim and thereafter the present crime is registered. Said fact has been narrated by the Trial Court in its para Nos.2(b) & (c) of its impugned Judgment and Order dated 12th April 2022. Apart from the said fact the record indicates that, the Applicant has been diagnosed as 'decompensated liver cirrhosis'. The said fact is mentioned by the Chief Medical Officer, Nashik Road Central Prison in his Affidavit dated 26th June

2022.

5. The sentence imposed upon the Applicant is five years of rigorous imprisonment. Possibility of hearing the present Appeal on its own merits in near future is remote.

In view of the above and after taking into consideration the allegations made against the Applicant, this Court is of the opinion that, during the pendency of the present Appeal, substantive sentence imposed upon the Applicant can be suspended and he can be released on bail.

6. At this stage, learned Advocate appointed to represent Respondent No.2 submitted that, the Applicant was residing in the same vicinity and is known to the victim. She submitted that, if the Applicant is released on bail, there is every possibility that the Applicant may threaten the minor victim. Said apprehension of the learned Advocate for Respondent No.2 can be taken care of by imposing stringent conditions upon him.

7. Hence, the following Order :-

- (i) Applicant/Accused be released on bail in POCSO Special Case No.339 of 2017 arising out of C.R. No.27 of 2017 registered with Colaba Police Station, District Mumbai on his furnishing P.R. bond of Rs.25,000/- with one or two local sureties in the like amount.

- (ii) Applicant is permitted to furnish cash bail for a period of 12 weeks and during the said period he is directed to comply with the condition of furnishing sureties as per clause (i) herein-above.
- (iii) After his release from jail and till final disposal of present Appeal, Applicant shall not enter jurisdiction of Colaba Police Station except for marking his presence as directed herein below.
- (iv) After his release from jail and till final disposal of present Appeal, Applicant is directed to attend Colaba Police Station on every first Monday of the month initially for a period of 1 year and thereafter on every first Monday of every 3rd month, i.e. 4 times in a year.
- (v) Applicant shall not contact/or threaten the Respondent No.2 and/or prosecutrix.

8. Application is allowed in the aforesaid terms.

[A.S. GADKARI, J.]