

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

**INTERIM APPLICATION NO. 2413 OF 2021
IN
CRIMINAL APPEAL NO.829 OF 2021**

Ishwar Sanappa Gauda

...Applicant/
Appellant

Versus

State of Maharashtra & Anr.

...Respondents

....

Mr. Prabhanjay R. Dave, Advocate for the Applicant/Appellant.

Mr. Sushan Mhatre, Advocate for Respondent No.2.

Mr. H. J. Dedhia, APP for the Respondent – State.

**CORAM : PRAKASH D. NAIK, J.
DATE : 3rd FEBRUARY, 2022.**

PER COURT:

1. This is an application for suspension of sentence and grant of bail during the pendency of criminal Appeal No.829 of 2021. The applicant is convicted for the offence under Section 10 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act') and sentenced to suffer rigorous imprisonment for 5 years and to pay fine of Rs.7,000/-. He is also convicted for offences under Sections 354 of Indian Penal Code and Section 363 of IPC and sentenced to suffer rigorous imprisonment for one year on each count.

2. The case of the prosecution is that the victim was sleeping with the parents on the footpath. Accused took the victim and outraged her modesty.

3. During the trial, the victim and her mother did not support the prosecution case and they were declared hostile.

4. Learned Advocate for the applicant submits that there is no substantive evidence to prove the charges against the applicant. The victim and her mother has not supported the prosecution case. The C.C.T.V. footage is of no assistance to the prosecution. The applicant was on bail during the trial. He has not misused the facility of bail. He was in custody for a period of three months prior to grant of bail and he is now in custody from 25th August, 2021.

5. Learned APP submitted that C.C.T.V. footage shows that the accused had picked up the victim. The trial Court has relied upon the said evidence and the other circumstances to convict the applicant.

6. Learned counsel for respondent No.2 submits that the C.C.T.V. footage establishes that the victim was sleeping and at that time the accused had picked up her and taken towards place of offence. The presumption under Section 29

of the POCSO Act, has been invoked by the trial Court for convicting the applicant.

7. It is noted that the applicant was on bail during the trial. There is no report that the applicant has misused the facility of bail. From the date of conviction, the applicant is in custody. The victim and the mother of victim has not supported the prosecution case. They were declared hostile. Considering the aforesaid aspects and the fact that the sentence of imprisonment is of short term, and appeal may not come up for hearing immediately, the sentence of imprisonment can be suspended.

8. Hence, I pass the following order:

ORDER

- i. Interim Application No. 2413 of 2021 is allowed;
- ii. During the pendency of Criminal Appeal No.829 of 2021, the sentence of imprisonment imposed vide Judgment and order dated 25th August, 2021 passed by learned Special Judge under POCSO Act, Gr. Mumbai in POCSO Special Case No.465 of 2018 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 ten 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 default 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. Interim Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)