

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

**INTERIM APPLICATION NO.2836 OF 2021
IN
CRIMINAL APPEAL NO.960 OF 2021**

Hisamuddin Nijamuddin Shaikh .. Applicant/Appellant
Versus
State of Maharashtra and Anr. .. Respondents

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Mr.Vikas Shivarkar, Advocate for the Applicant/Appellant.
Mr.Arfa Sait, APP for the Respondent-State.
Ms.Priyanka Chavan, Advocate for Respondent No.2.

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CORAM : PRAKASH D. NAIK, J.

DATED : FEBRUARY 10, 2022.

P.C. :

This is an application for suspension of sentence and grant of bail. The applicant has been convicted for the offence punishable under Section 10 read with 9(m) of Protection of Children from Sexual Offences Act ("POCSO Act", for short), and sentenced to suffer rigorous imprisonment for five years and to pay fine of Rs.25,000/-. The applicant is also convicted for the offence punishable under Section 506 of Indian Penal Code ("IPC", for short) and sentenced to suffer rigorous imprisonment for two years. He is acquitted for the offence punishable under Section 376 of IPC and Sections 5(5)(m) of POCSO Act.

2 Learned advocate for the applicant-appellant submitted that the applicant was on bail during the trial. He has not misused the facility of bail. He was in custody for a period of one year. There are discrepancies in the evidence. This is a case of mistaken identity. He has been acquitted for the offence punishable under Section 377 of IPC.

3 Learned APP submitted that there is no reason to doubt the evidence of the victim and the other witnesses. The medical evidence supports the prosecution case. There is sufficient evidence before the Court on the basis of which the applicant-accused has been convicted.

4 Learned counsel for the respondent no.2 submitted that the victim is a minor boy. There is no reason to discard his evidence. Medical evidence corroborates the version of the victim boy. The applicant-appellant has not deposited the fine amount. The trial Court has awarded compensation to the victim.

5 As noted hereinabove, the sentence of imprisonment is of five years. The Appeal has been admitted. It may not come up for hearing immediately. The applicant-appellant has already undergone sentence of one year. The discrepancies urged by the defence has to be

looked into at appropriate stage. In the aforesaid circumstances, the sentence can be suspended.

6 Hence, I pass the following order:

:: ORDER ::

- (i) Interim Application No.2836 of 2021, is allowed;
- (ii) During the pendency of Criminal Appeal No.960 of 2021, the sentence of imprisonment imposed vide judgment and order dated 6th October, 2021, passed by the Special Judge Under POCSO Act, Pune, in POCSO Special Case No.58 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.25,000/-, with one or more sureties in the like amount;
- (iii) The applicant-appellant is permitted to furnish cash bail in the sum of Rs.25,000/-, for a period of ten weeks, in lieu of surety;
- (iv) The applicant-appellant shall report the trial Court once in six months on first Saturday of the month, till disposal of the Appeal;

- (v) 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 the prosecution is at liberty to move an application for cancellation of bail;
- (vi) Fine amount if not deposited, the applicant shall deposit it before the trial Court while executing bail bond;
- (vii) If the victim residing in the same area, the applicant-appellant shall stay out of that area. If the victim has left her previous place of residence, this condition stands dispensed with;
- (viii) Interim Application No.2836 of 2021, stands disposed of accordingly.

(PRAKASH D. NAIK, J.)