

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1334 OF 2023
IN APEAL/298/2023 WITH APEAL/298/2023

SHAIKH AASIF SHAIKH HABI
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Harshal Prakash Randhir
APP for Respondent No.1/State : Ms. V. N. Patil Jadhav
Advocate for Respondent No.2/victim : Mr. Shriniwas A. Kulkarni
(Appointed through Legal Aid)
...

CORAM : S. G. MEHARE, J.

DATE : 11-07-2023

PER COURT :-

1. Heard the learned counsel for the applicant, the learned A.P.P. for respondent No.1/State and the learned counsel for respondent No.2/victim.
2. The applicant is seeking suspension of sentence imposed upon him by the learned Additional Sessions Judge, (Fast Track Special Court) Jalgaon, in Special (POCSO) Case No.43 of 2018 dated 08.02.2023, to suffer rigorous imprisonment for three years for the offence punishable under Section 354A of the Indian Penal Code and fine of Rs.5000/- and rigorous imprisonment for five years for the offence punishable under Section 8 of the Protection of Children from Sexual Offences Act, 2012 and fine of Rs.10,000/-. The applicant has deposited fine amount.

3. The learned counsel for the applicant would submit that it is a short term conviction. There are no antecedents to the discredit of the applicant. The applicant has a good defence. The evidence needs to be re-appreciated. The evidence on sexual assault for outraging modesty has not been properly appreciated. There is no possibility of listing the matter in due course in near future for final hearing. Hence, the sentence may be suspended.

4. Per contra, the learned A.P.P. for respondent No.1/State and the learned counsel for respondent No.2/victim have strongly opposed the application. They would submit that it is an offence against a child. It has been proved that the applicant has outraged the modesty of a child and sexually assaulted her. The offence is grave. Short term conviction may not be a ground to suspend the sentence. Therefore, the application may be rejected.

5. Perused the application and impugned judgment and order.

6. Normally, the short term sentence is suspended. The applicant was on bail during trial. There were no complaints against him. He had not misused the liberty granted to him while he was on bail. There are grounds to consider. Considering the number of appeals against the convicts undergoing sentence. There is no possibility to have early disposal of the present case in near future. Considering this aspect, this is a fit case to exercise discretion under Section 389 of the Code of Criminal Procedure. Hence, the order :-

- i) Criminal application is allowed.
- ii) The execution, implementation, effect and operation of the sentence, to suffer rigorous imprisonment for three years for the offence punishable under Section 354A of the Indian Penal Code and rigorous imprisonment for five years for the offence punishable under Section 8 of the Protection of Children from Sexual Offences Act, 2012 imposed upon the applicant by the learned Additional Sessions Judge, (Fast Track Special Court) Jalgaon, in Special (POCSO) Case No.43 of 2018, dated 08.02.2023, is suspended till conclusion of the appeal.
- iii) The applicant be released on bail on executing P.B. and S.B. of Rs.50,000/- with one solvent surety of the like amount.
- iv) Bail before the learned Additional Sessions Judge, (Fast Track Special Court) Jalgaon.
- v) List the criminal Appeal No.298 of 2023 on 20.09.2023.

**(S. G. MEHARE)
JUDGE**

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