

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO.1884 OF 2023
IN
CRIMINAL APPEAL NO.441 OF 2023**

**KASHINATH RAJU DHIWAR
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

....
Mr. Sopan G. Bobde, Advocate for the Applicant
Mrs. G.L. Deshpande, APP for the Respondent – State
...

**CORAM : S.G. CHAPALGAONKAR, J.
(VACATION COURT)**

DATE : 17th MAY, 2023

PER COURT :

. This is an application for suspension of substantive sentence and grant of bail during the pendency of the Criminal Appeal No.441 of 2023, challenging the judgment and order dated 11th May, 2023 passed by learned Special Judge (POCSO Act) and Additional Sessions Judge, Vaijapur, Dist. Aurangabad in Special Case (Child Prot.) No.02 of 2017.

2. The learned advocate for the applicant would submit that vide the impugned judgment and order the applicant is convicted for the offence under Section 354 of the Indian Penal Code (in short, 'IPC') and sentenced to undergo rigorous imprisonment for three years and fine of Rs.1000/- in default to suffer further rigorous

imprisonment for six months. He would further point out that the applicant is also convicted for offence punishable under Section 354-B of the IPC and sentenced to suffer rigorous imprisonment for three years and fine of Rs.1,000/- in default to suffer further rigorous imprisonment for six months. Similarly, the applicant is convicted for offence punishable under Section 8 of the Protection of Children from Sexual offences Act, 2012 (hereinafter referred to as the 'POCSO Act') and sentenced to suffer rigorous imprisonment for five years and fine of Rs.2000/- in default to suffer further rigorous imprisonment for one year. The applicant is further convicted for the offence punishable under Section 12 of the POCSO Act and sentenced to suffer rigorous imprisonment for two years and fine of Rs.1000/- in default to suffer rigorous imprisonment for three months.

3. Heard Mr. Bobde, learned advocate for the applicant - appellant and Mrs. G.L. Deshpande, the learned APP for the respondent – State.

4. Mr. Bobde, the learned advocate appearing for the applicant would submit that during the trial the applicant was on bail. He has not misused the liberty. He would further take this court through the evidence of the prosecution witnesses and points out that there are material contradictions and omissions. He would submit

that the evidence on record is not sufficient to convict the applicant. He would further submit that the fine amount has already been deposited by the applicant and receipt (page no.77 in Criminal Appeal) to that effect is placed on record.

5. In view of the above, I do not find any impediment to suspend the substantive sentence of imprisonment pending appeal. Hence, the following order.

ORDER

- (i) The application is allowed.
- (ii) The substantive sentence imposed on the appellant – applicant vide the impugned judgment and order dated 11th May, 2023 passed by learned Special Judge (POCSO Act) and Additional Sessions Judge, Vaijapur, Dist. Aurangabad in Special Case (Child Prot.) No.02 of 2017 is suspended pending the appeal. Meanwhile, the applicant be released on bail on his furnishing PB. and S.B. of Rs.25,000/- with one solvent surety in the like amount, pending the appeal. The applicant shall attend the proceedings of appeal regularly. Bail before the learned trial Court.

(**S.G. CHAPALGAONKAR**)
VACATION JUDGE