

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

**904 CRIMINAL APPLICATION NO.3734 OF 2023
IN APEAL/928/2023**

**HARSH @YASH S/O AMBADAS ATHAWALE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

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Advocate for Applicant : Mr. D. M. Shinde
APP for Respondent-State: Mr. R. D. Sanap
Advocate for Respondent No.2 : Ms. Nayna Patil (Appointed)

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**CORAM : SANDIPKUMAR C. MORE, J.
DATED : 08/11/2023.**

P. C. :

1. Heard rival submissions.
2. The applicant, who is original accused, is seeking suspension of his substantive sentence of imprisonment imposed upon him vide judgment and order dated 30/09/2023 in Special POCSO Case No.38 of 2021. Though the appellant / accused is convicted under various sections, but his maximum imprisonment is of three years.
3. The learned counsel for the applicant submits that the learned trial court has imposed imprisonment up to 3 years, but the applicant was an under trial prisoner. However, it seems that he has deposited the entire fine amount and he has already undergone imprisonment for the period around 2 years and 4 months.

4. On the contrary, the learned A.P.P. as well as the learned counsel for the respondent No.2- victim, strongly opposed the application on the ground that the conviction is recorded by the learned Trial Court after considering the entire evidence on record. However, it appears that the present applicant / accused has already paid the fine amount. Moreover, he is in jail for about 28 months and the sentence of imprisonment imposed upon him is of three years only. In view of the same, following order is passed

ORDER

- (i) The application is hereby allowed and substantive sentence of imprisonment imposed upon the applicant / accused vide judgment and order dated 30/09/2023 in Special POCSO Case No.38 of 2021 is hereby suspended during the pendency of this appeal.
- (ii) The applicant be released on bail on execution of his P.R. bond of Rs.25,000/- with one or more solvent sureties in the like amount.
- (iii) Bail in lower Court.
- (iv) The fees of learned counsel Ms. Nayna Patil appointed for respondent No.2 – victim victim be paid to her as per rules.
- (v) Application is accordingly disposed of.

(SANDIPKUMAR C. MORE, J.)