

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.936 OF 2023
IN
CRIMINAL APPEAL NO.269 OF 2023

Vishal Nilesh Modak .. Applicant
Versus
The State of Maharashtra & Anr. .. Respondents

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Mr.Abhijit A. Tambe for the Applicant.
Mr.Y.M.Nakhawa, A.P.P. for the State.
Mr.Yashpal Thakur, Appointed Advocate for the Respondent
No.2

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CORAM: BHARATI DANGRE, J.
DATED : 25th APRIL, 2023

P.C:-

1. By the present Application, the Appellant/Applicant seek suspension of sentence imposed on him by the Special Judge, Sindhudurga-Oros in Special Case No.18 of 2020 on 31/01/2023. The Applicant stand convicted for committing the offences punishable under Sections 354A(1)(i), 354A(1)(ii) of IPC and Section 7 of the POCSO Act and he is sentenced to undergo R.I. for three years and to pay fine of Rs.1,000/-, in default of payment of fine, he is directed to undergo S.I. for 15 days.
2. It is this judgment which is subjected to Appeal before this Court. The Appeal is already admitted and pending before this Court for adjudication.

3. The learned counsel for the Applicant would invite my attention to the inconsistencies in the version of the prosecution case and, according to him, the same has materially affected the truthfulness of the version of the prosecutrix, whose age itself is in doubt and it has not been conclusively established that she is minor. Further submission advanced is, the Applicant was on bail throughout the trial and he has never misused his liberty. Apart from this, his sentence has been suspended and he came to be released on bail immediately upon furnishing personal bond by the trial Court itself, so as to enable him to file an Appeal.

Considering the fact that the Appeal filed by the Appellant is already admitted by this Court and sentence imposed upon him is of fixed term, in the wake of the decision of the Hon'ble Supreme Court in the case of ***Bhagwan Rama Shinde Gosai & Ors. Vs.State of Gujarat***¹, the application deserve to be allowed. Hence, the following order.

: **ORDER** :

1. Application is allowed.
2. The sentence imposed upon the Applicant under the impugned judgment stand suspended and he shall continue to remain on bail, as directed by the Sessions Judge, Sindhudurg-Oros by his order dated 31/01/2023.

(SMT. BHARATI DANGRE, J.)

¹ (1999) 4 SCC 421