

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 1619 OF 2023
IN
CRIMINAL APPEAL NO. 490 OF 2023**

Samadhan @ Sonu Madhukar Marade .. Appellant
Versus
State of Maharashtra and anr. .. Respondent
...

Mr. Pratik Kalantri, for the applicant.
Mr. Sushan Mhatre, for respondent no.2.
Mr. Y.M. Nakhwa, APP for the State.

**CORAM: BHARATI DANGRE, J.
DATED : 26th SEPTEMBER, 2023**

P.C:-

IA No.1619 of 2023.

1 By the present application, the applicant seek suspension of sentence imposed on him in Special Case (POCSO) No. 182 of 2020, by the Special Judge, at Nashik.

On being charged with an offence punishable under Section 354, 354 - A(i) and (ii) of Indian Penal Code and Section 12 of the Protection of Children from Sexual Offences Act, the Court has found him guilty and imposed punishment under Section 12 of the POCSO Act, directing him to undergo Rigorous Imprisonment for one year and to pay fine of Rs. 1000/- in default to suffer Simple Imprisonment for three months.

2 On the previous date, I had expressed my disinclination to suspend the sentence in the wake of the finding recorded in the impugned judgment and learned counsel sought time to obtain necessary instructions, whether he still want to press the application or else he had the option of expeditious hearing of the appeal, and he has chosen the former and hence I am supporting the rejection by the following reasoning:-

The case of the prosecution which has surfaced in the impugned judgment reveal that the accused, aged 26 years working as labourer phoned the informant to inform that food items are distributed to the beneficiaries and when being informed that he is out of town, he permitted the victim, his daughter, to bring the ration food items from the fair price shop. Pursuant to the said instructions, when the victim approached the accused, it is alleged that he outraged her modesty and she returned weeping.

In order to bring him the guilt, the prosecution examined 7 witnesses and PW-2 victim in her evidence stated her date of birth to be '26/08/2007', and in the year 2020, she was pursuing her education in VIIth standard. She unequivocally narrated the incident and categorically speak of the act committed by the accused by taking her in the field of Sugarcane. She also narrate that on her way she met PW-6 and this is how the incident was informed to the informant her father.

3 PW-1, the informant has also stepped into the witness box along with the panch witness PW-3 as well as the Headmaster of the School to produce the extract of General

Register maintained by the School to prove the birth date of the victim. He proved the bonafide certificate, where the date of birth was depicted as 26/08/2007.

4 The victim in her evidence is categorical about the act of the accused which definitely amounted to sexual assault as contemplated under Section 12 of the POCSO Act and the learned Judge deemed it appropriate to impose the minimum penalty of one year by taking into consideration that he is a young boy and has no criminal antecedents.

The sentence imposed is minimum in nature and in the wake of the decision of the Apex Court in *Preet Pal Singh vs State of UP & Anr (2020) 8 SCC 645*, when on the basis of the evidence, the trial Judge deemed it appropriate to impose the sentence on the guilt of the accused having proved by a reasoned judgment/order, the presumption of innocence does not arise. The Principle of bail being the rule & jail is an exception no longer apply, when there is conviction on trial.

In the wake of the clinching evidence on record based on which a finding of guilt is recorded under Section 354, 354-A (i) and (ii) of IPC and Section 12 of POCSO, Act and with a befitting sentence being imposed, I do not deem it necessary to suspend the same.

As a result the application is rejected.

(SMT. BHARATI DANGRE, J.)