

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 1551 OF 2023
IN
CRIMINAL APPEAL (ST) NO. 7190 OF 2023**

Devendra Vasant Sutar

...Applicant

vs.

The State of Maharashtra and Anr.

...Respondents

Mr.Tejas Hilage - Advocate for Applicant.

Mr.S.R.Agarkar - APP for Respondent No.1 - State.

Ms.Meghna Gowalani - Appointed Advocate for Respondent No.2.

Mr.Shirish Bhalerao - API - Lonikand Police Station - Pune City.

CORAM : S. M. MODAK, J.

DATE : 4th DECEMBER 2023

P. C. :-

1. Heard learned Advocate for the Applicant - Appellant, learned APP and learned Advocate appointed for Respondent No.2.

2. It is true that the earlier Criminal Bail Application No. 1845 of 2022 filed by this Applicant was rejected by observing that Appeal is maintainable. As per the order dated 10th February, 2023, this order was modified by giving a liberty to the Applicant to prefer an Appeal (Coram : N. R. Borkar, J.). Accordingly, this Appeal is filed. However, there are various judgments delivered by this Court observing that when the

provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 ["SC & ST Act"] and Protection of Children from Sexual Offences Act, 2012 ["POCSO Act"] are invoked, it is the provisions of POCSO Act which prevail. The provisions of the Code of Criminal Procedure, 1973 ["Cr.P.C."] are applicable to the prosecution under POCSO Act as per Section 31. There is no remedy provided in POCSO Act of an Appeal challenging the orders passed by the trial Court. The provisions of Section 42A of the POCSO Act gives overriding effect over the provisions of any other law, if there is an inconsistency. In this case, there is a provision of an Appeal under the provisions of SC & ST Act, whereas, there is no provision of an Appeal under POCSO Act. It is true that Section 42 of the POCSO Act will come into picture. As such, an Appeal will not be maintainable. The provisions of Cr.P.C., will be applicable.

3. Learned Advocate for the Appellant relied upon following judgment :-

(a) Suraj S. Paithankar v/s. The State of Maharashtra¹

4. I have perused it. Reference of this judgment do not find place in the order dated 13th January, 2023 and 10th February, 2023. So, those orders can be said to be *per incuriam*. Hence,

1 Bail Application No. 817 of 2020 : 3rd July 2020 : Bombay High Court

Appeal will not be maintainable. Hence order :-

O R D E R

- (i) Appeal is disposed of.
- (ii) Interim Application is also disposed of.
- (iii) Let the Applicant to file Bail Application.
- (iv) He is certainly entitled for condonation of delay caused in filing all these proceedings.

[S. M. MODAK, J.]