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**INTERIM APPLICATION NO.2291 OF 2023
IN
CRIMINAL APPEAL NO.609 OF 2023**

Ms. Prerna Shukla, Advocate appointed for Respondent No.2.

DATED : 29TH NOVEMBER 2023

P. C. :

2. Applicant is convicted by learned Special Judge, Mangaon, District Raigad in Special (POCSO) Case No.121 of 2020, by judgment and order dated 8th March 2023, for the

offence punishable under Section 376(1) of Indian Penal Code (for short "IPC") and sentenced to suffer rigorous imprisonment for 10 years and to pay fine of Rs.50,000/-. Applicant is further convicted for offence under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act") and is sentenced to suffer rigorous imprisonment for 20 years and to pay fine of Rs.1,00,000/-. Applicant is also convicted under Section 8 of of POCSO Act and is sentenced to suffer rigorous imprisonment for 3 years and to pay fine of Rs.5,000/-. All sentences imposed on applicant were to run concurrently.

3. Learned APP and learned Advocate appointed for Respondent No.2 have strenuously opposed application. According to them there is sufficient evidence on record to justify conviction of applicant. Learned Advocate for Respondent No.2 has placed reliance on decision of learned Single Judge of this Court in Criminal Appeal No.725 of 2019, dated 18th June 2021, which according to her is rendered in the similar facts. By relying on said judgment, she submits

that the trial Court is justified in recording conviction of applicant.

4. Perused the notes of evidence and impugned judgment placed on record.

5. *Prima facie* there appears substance in contention of applicant that there is no material on record to justify conviction of applicant under Section 376(1) of IPC and Section 4 of POCSO Act. Even if prosecution case is taken as it is, the offence, if any, committed by applicant can be termed as sexual assault provided under Section 7 of POCSO Act, which is punishable under Section 8 which prescribes minimum sentence of 3 years imprisonment which is already awarded by the trial Court.

6. This Court is of a *prima facie* view that trial Court has erred in convicting applicant under Section 376(1) of IPC and under Section 4 of POCSO Act. The trial Court has failed to appreciate prosecution evidence in proper perspective. Appeal is not likely to be heard in near future, therefore, applicant deserves to be released on bail. Hence, the following order :

(i) Application is allowed.

- (ii) Substantive sentence of imprisonment imposed by Special Judge, Mangaon, District Raigad vide judgment and order dated 8th March 2023, in Special (POCSO) Case No.121 of 2020 is suspended during the pendency of Appeal.
- (iii) Applicant-Pundlik Madhukar Tarde be released on bail on executing PR bond in the sum of Rs.15,000/- with one surety in the like amount.
- (iv) Fine amount be paid, if not already paid.
- (v) Applicant shall attend the concerned police station once a month on first Sunday between 10 am to 12 noon.
- (vi) Applicant shall furnish his current address and cell number to the concerned police station.

[NITIN B. SURYAWANSHI, J.]