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

**INTERIM APPLICATION NO. 2705 OF 2023
IN
CRIMINAL APPEAL NO. 315 OF 2023**

Kalamuddin Mohamad Istiyak Ansari

Hill no. 3, Kholi no.3,

Near Gati Masjid, Himalaya Society,

Ghatkopar(East), Mumbai.

... Applicant

vs.

1. The State of Maharashtra

Ghatkopar Police Station,

Mumbai CR No. 613/2016.

2. Raisa Iqbal Shaikh,

Hill no.3, Khadi no. 3,

Near Gati Masjid, Himalaya Society,

Ghatkopar (East), Mumbai.

... Respondents

Mr. O.P. Lalwani a/w. Mrs. Kunda Gaikwad for the applicant.

Mr. P.P. Shinde, APP for the State.

Ms. Shraddha Sawant, appointed for Respondent No.2.

**CORAM : REVATI MOHITE DERE &
GAURI GODSE, JJ.**

DATED : 20th OCTOBER 2023

PC :-

1. By this application, the applicant seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of the aforesaid appeal.

2. The aforesaid appeal is filed by the applicant challenging the Judgment and Order dated 7th December 2020, passed by learned Sessions Judge, Greater Bombay in POCSO Special Case No. 120 of 2017, has been convicted for the offence punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (**‘POCSO Act’**), and sentenced to suffer imprisonment for life and to pay fine of Rs.1000/- in default, to suffer simple imprisonment for one month. The applicant is directed to pay fine of Rs. 25,000/- in default, to suffer simple imprisonment for six months.

3. It is the case of the prosecution that on 10th December 2016, informant ‘R’, lodged the report with Ghatkopar Police Station wherein she reported that she was residing at the address

mentioned in the charge sheet along with her husband and two daughters namely 'L' – aged 4 years and 'Z' – aged 3 years and one son 'F' -aged 10 months. Her husband was working as a labourer, and he used to earn the livelihood. She used to fill water from the tap of one 'FA bhai'. The water supply from the tap used to come from 1.00 pm till 6.30 pm; her neighbour Saira used to fill the water and then, she used to take the water pipe from her house and take it to her home and fill the water. On 9th December 2016, at about 5.00 pm, after completing filling the water by Saira, her nephew-Koail, age 20 years, called her by saying that they completed filling the water. So, she sent her daughter 'L' along with a small pot (कळशी) to bring pipe in that pot. After some time, 'L' came and she was scared and started crying; when asked she told that Koail inserted his penis in her mouth “कोईल भय्याने मेरे मुँह में बुल्ली डाला ”. Then she went to Koail and asked him about the same. At that time, he was scared and left home without saying anything. On this report, PSO, PS of Ghatkopar Police Station registered the offence vide Crime No. 613/2016, for the offences punishable under sections 377 of IPC

and also under Sections 4, 12 of the POCSO Act.

4. Learned counsel for the applicant submitted that there are infirmities and variances in the evidence of the victim and the allegations made in the FIR. He further submitted that there are material omissions and contradictions in the evidence of the witnesses. Learned counsel submitted that there is absolutely no evidence against the applicant and that he is falsely implicated in the present case. He further submitted that the applicant has been incarcerated since 10th December 2016. Learned counsel, therefore submitted that the applicant's sentence be suspended and the applicant be enlarged on bail.

5. Learned APP opposed the application and submitted that the evidence on record is sufficient to show that the applicant has committed the crime. She submitted that considering the evidence on record, this is not the case where the applicant is entitled to be enlarged on bail.

6. Learned counsel for the respondent no.2-original complainant also opposed the application. She submitted that the prosecution has proved the case beyond reasonable doubt the applicant has committed the crime. Learned counsel submitted that the perusal of the evidence is sufficient to prove the alleged crime against the applicant. She, therefore, submitted that the application be rejected.

7. We have heard the learned counsels. We have perused the record. A perusal of the evidence prima facie shows the complicity of the applicant in the alleged crime. Considering the nature of the offence and evidence on record, this is not a case where the applicant can be enlarged on bail. Hence, the application is rejected. Considering the fact that the application has been incarcerated since 10th December 2016, the preparation of paper-book and hearing of the appeal is expedited.

8. Application is disposed of.

9. All concerned to act on the authenticated copy of this order.

(GAURI GODSE, J.)

(REVATI MOHITE DERE, J.)