



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 3149 OF 2023
IN
APPEAL NO. 82 OF 2020**

Riyaz I. Sayyad

...Applicant

Versus

1. The State of Maharashtra

2. XYZ (Original Complainant)

...Respondent

Ms Shivani Kondekar for the Applicant.

Smt. M.M. Deshmukh, APP for the Respondent/State.

Mr. Manas Gavankar, Appointed Advocate for Respondent No.2.

**CORAM : NITIN W. SAMBRE &
N. R. BORKAR, JJ.**

DATE : 11 OCTOBER, 2023.

PC:-

1. The applicant was tried for the offence punishable under Sections 376(i) & 506 (2) of the Indian Penal Code and Sections 3, 4, 6 and 8 of the Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act") in Special Child Case No.38 of 2015. The applicant came to be acquitted for the offence punishable under Section 376(i) and 506 (2) of the Indian Penal Code and Sections 3,4,5 and 6 of the POCSO Act. However, he was convicted for the offence punishable under Sections 8 and 18 of POCSO Act and sentenced to suffer R.I. for three years on both counts.

2. Against acquittal of the applicant, the State has preferred the appeal being Appeal No. 82 of 2020, in which, pursuant to the action under Section 390 of Code of Criminal Procedure, the applicant has been taken into custody. We are informed

that though the application for bail was made before the Special Court, his prayer was not considered. As such, the applicant is promoted to approach this Court.

3. The contention is that the applicant has already undergone the punishment which was awarded by the Special Court for the offence punishable under Sections 8 and 18 of the POCSO Act.

4. Apart from above, our attention is invited to the order dated 17 February 2016 passed by the Special Court below Exhibit-5 in Special Case (Child) No. 38 of 2015 granting bail to the applicant.

5. A statement made by learned counsel for the applicant that the applicant has already undergone the punishment of three years is not disputed.

7. In the aforesaid background and having regard to the fact that the applicant was taken into custody, pursuant to the order directing action under Section 390 of Code of Criminal Procedure, we deem it appropriate to allow the present Application. Hence, the following order.

ORDER

(a) The Application is allowed.

(b) The applicant be released on bail on furnishing P.R.Bond of Rs.10,000/- with one surety in the like amount;

(c) Time of three months is granted to the applicant to furnish sureties. Till then, the applicant be released on cash security of Rs.10,000/-.

(d) The Application stands disposed of in the aforesaid terms.

(N.R. BORKAR, J.)

(NITIN W. SAMBRE, J.)