

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL INTERIM APPLICATION NO. 3669 OF 2022
IN
CRIMINAL APPEAL NO. 1198 of 2022

Saddam @ Yeda Banty Mohd Hanif .. Applicant
Shaikh

Versus

The State of Maharashtra & Anr .. Respondents

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Ms.Vrushali L. Maindad with Ms.Ankita Nishad and Shrushti S. Tupe for the applicant.

Mr.Swapnil Ovalekar for respondent no.2.

Mr.N.B. Patil, APP for the State.

CORAM: BHARATI DANGRE, J.

DATED : 3rd APRIL 2023

P.C:-

1 Heard Ms.Vrushali Maindad, Legal Aid appointed Advocate for the applicant, Mr.Swapnil Ovalekar who is also appointed by the High Court Legal Services Committee and I have also heard the learned APP for the State on the application seeking suspension of sentence, pending the Appeal assailing the judgment delivered in Sessions Case No.544/2020, convicting the applicant for committing an offence punishable u/s.5(n) which is punishable u/s.10 of the POCSO Act. He has been sentenced to suffer RI for five years and to pay fine of Rs.10,000/-

in default to undergo RI for one year.

2 On perusal of the impugned judgment along with the notes of evidence of the witnesses, I find that the learned Judge has rightly appreciated the evidence of the victim who is consistent in his version before the police, the Magistrate and then before the Court.

Before the Court, he has specifically deposed about the act committed by the accused persons and worth to note that the victim is a young boy, aged 10 years.

4 Though the learned counsel for the applicant would vehemently submitted that PW 5, a person who has medically examined, the victim do not support the case of the prosecution, I am not able to accept the said submission because the case of the prosecution itself is limited to the version of the victim as deposed in the Court and there may not be actual penetration which would have resulted in any injury or show any indications in his anus.

5 The applicant is accused of a serious and heinous offence and now having been convicted on appreciation of the material placed on record, the presumption of innocence is no longer available to him. With a conviction staring in his face, merely because he has undergone period of 3 ½ years, he do not deserve consideration, for suspension of sentence and on being released on bail.

Application is therefore, rejected.

6 Learned counsel for the applicant, however, request that considering the period of incarceration undergone, the Appeal shall be heard expeditiously.

I must consider her request and accordingly direct the Registry to list the Appeal for final hearing in the week commencing from 26th June 2023 since the Record and Proceedings is received.

(SMT. BHARATI DANGRE, J.)