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

**INTERIM APPLICATION NO.3710 OF 2022
IN
CRIMINAL APPEAL NO.1099 OF 2022**

Tushar Barku Salunkhe ...Applicant
vs.
The State of Maharashtra & Anr. ...Respondents

Mr. Rahul Arote i/b Mr. Jadhav Anil Jaising for the Applicant.
Mrs. M. H. Mhatre APP for Respondent No.1-State.
Mr. Veerdhaval Deshmukh for Respondent No.2.

CORAM : NITIN B. SURYAWANSHI, J.

DATED : 25TH OCTOBER 2023

P. C. :

1. This is an application for suspension of sentence and grant of bail during the pendency of Criminal Appeal preferred by applicant challenging the judgment of conviction.

2. Applicant is convicted for offence under section 5(1) of the Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act") in POCSO Special Case No.30 of 2017, by the Special Judge under POCSO Act, Greater Mumbai and is sentenced to suffer rigorous imprisonment for

ten years and to pay fine of Rs.1,00,000/-.

3. Learned Advocate for applicant assailed conviction on various grounds including that prosecution has failed to prove that victim was minor at the time of incident. He submits that there appears consensual relation between applicant and victim. During trial, applicant was on bail and he has not misused liberty of bail, therefore, seeks suspension of substantive sentence.

4. Learned APP and learned Advocate representing Respondent No.2, on the other hand supported impugned judgment. He submits that victim has supported prosecution case and date of birth cannot be gone into at this stage.

5. Prima facie there appears substance in contention of applicant that prosecution has failed to prove that victim was minor at the time of incident. Defence has seriously disputed the age of victim. Birth certificate is produced by victim herself. Exhibition of the same was objected by defence at that time, trial Court has observed that said objection shall be considered at the time of final decision of the case. Without recording a finding on admissibility, proof and relevancy of birth certificate, trial Court has relied upon

the same. Therefore, the Applicant has made out case for grant of bail. Appeal is not likely to be heard in near future. Therefore, Application deserves to be allowed. Hence, the following order :

- (i) Application is allowed.
- (ii) Substantive sentence of imprisonment imposed by Special Judge under POCSO Act vide judgment and order dated 29th September 2022, in POCSO Special Case No.30 of 2017 is suspended during the pendency of the Appeal.
- (iii) Applicant-Tushar Barku Salunkhe 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 already not paid.
- (v) Applicant shall attend the concerned police station once a month on first Monday between 10 am to 12 noon.
- (vi) Applicant shall furnish his current address and cell number to the police station.

[NITIN B. SURYAWANSHI, J.]