

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 4288 OF 2022
IN
CRIMINAL APPEAL NO. 1230 OF 2022

Rajesh Dattaram Lad .. Applicant
Versus
The State of Maharashtra & Anr .. Respondents
...

Mr. Kuldeep Patil i/b Ms.Saili Dhuru, Nikhil Hire, Sushmita Sarkar and Soham Pawar for the applicant.
Mr.Hitesh P. Muthe for respondent no.2.
Mrs.Anamika Malhotra, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 11th APRIL 2023

P.C:-

1 The Appeal filed by the applicant is admitted on 21/12/2022 and by the present application, he seek suspension of sentence and his release on bail pending adjudication of the Appeal.

2 Appeal is filed being aggrieved by judgment of the Special Judge, delivered on 30/9/2022 in POCSO Special Case No.50/2017 under which the appellant stand convicted for the offence punishable us.354 of IPC and Section 8 of the POCSO Act.

3 On being convicted under the POCSO Act, he is sentenced to suffer SI for three years as well as for conviction u/s.354 IPC, he is sentenced to suffer SI for two years. His substantive sentences are directed to run concurrently

4 The learned counsel Mr.Patil appearing for the applicant would rely upon the inconsistency in the prosecution case Which has surfaced through the evidence of the victim herself and her father/complainant, who as per the say of his daughter, had reported the incident. Apart from this, his submission is, PW 4, the friend of the victim has also not supported the case of the prosecution. He would submit that the specific plea of alibi has been taken before the trial Judge, which the Court has failed to appreciate.

In any case, his submission is that the evidence will have to be appreciated at the time of trial, but since the applicant was on bail throughout the trial and even he has been admitted to ad-interim protection, the sentence imposed upon him deserve to be suspended and he deserve his release on bail.

5 I find substance in the submission of Mr. Patil, since I have also noticed the inconsistency in the prosecution case which has not been adverted to, by the learned Judge and in any case, since the sentence imposed is of fixed period of three years, in absence of any special reasons to deny the suspension of the sentence and releasing the applicant on bail, in the wake of the

decision of the Apex Court in case of *Bhagwan Rama Shinde Gosai & Ors. Vs. State of Gujrat (1999) 4 SCC 421*, the applicant deserve the relief as prayed for in the Interim Application.

The sentence imposed upon the applicant under the impugned judgment stand suspended and he is directed to be released on bail on furnishing bail bond in the sum of Rs.25,000/- with one or more sureties in like amount, while appeal is pending before this Court.

Hearing of the Appeal is expedited.

5 Registry shall ensure that the Record and Proceedings are received in this Court on or before 31/8/2023.

Liberty is given to the respondent no.2 to mention the Appeal for being taken up for hearing.

Interim Application is disposed off.

(SMT. BHARATI DANGRE, J.)