

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.4409 OF 2022
WITH
INTERIM APPLICATION NO. 4410 OF 2022
IN
CRIMINAL APPEAL NO. 1267 OF 2022

Suraj Rampath Jaiswar .. Applicant
Versus
The State of Maharashtra & Anr .. Respondents
...

Mr. Jagdish Singh for the applicant/appellant.
Mr. Sagar Rane for respondent no.3
Mr. Y.M.Nakhawa, APP for the State.
Mr. Durgesh More, PSI, Wadala Police Station.

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

P.C:-

1 By the present application, the applicant seek suspension of sentence and his release on bail, on being convicted for committing an offence under Section 354-A, 509 of IPC and Section 12 of the POCSO Act. He is directed to undergo imprisonment for three months besides imposition of fine, and it is informed that the fine amount is already deposited.

2 Heard the learned counsel for the applicant and the learned counsel appearing for respondent no.3 who is appointed

through Legal Aid to represent the complainant.

3 The learned counsel for the complainant would invite my attention to the operative portion of the impugned judgment, and would submit that the learned Judge ought to have imposed the sentence under Section 12 of the POCSO Act, and by taking recourse to Section 42 of the Act, could have adjusted the said sentence, on being recording a finding of guilt under Section 354-A and Section 509 of IPC.

I find sufficient substance in the said submission, as Section 42 of the POCSO Act contemplate of imposing an alternative punishment, for the offences under the POCSO and under the IPC, the offender found guilty under both the Acts would be provided with the punishment which is greater in degree. However, it is to be considered that when the conviction is under Section 12 of the POCSO Act, the discretion vest in the Judge to impose a punishment upto three years, and the learned counsel would submit that, as far as section 354 is concerned, since the maximum punishment which could be imposed is imprisonment upto 1 year, he ought to have imposed penalty under Section 12 instead of imposing punishment under Section 354-A and 509 of IPC.

This argument will have to be tested in the appeal, though it can be clearly seen that both the provisions i.e. Section 12 on one hand and Section 354-A, 509 of IPC confer discretion upon the trial judge, and do not require him to impose a

prescribed minimum punishment, as is contemplated under Section 4 and 8 of the POCSO Act.

4 In any case, considering the evidence on record and the fact that the punishment is of a fixed period of three months, in the wake of the decision of the Apex Court in case of *Bhagwan Rama Shinde Gosai & Ors vs. State of Gujarat (1999) 4 SCC 421*, the sentence imposed on the applicant deserve to be suspended, pending the adjudication of the Appeal. Similarly the applicant is also entitled for being released on bail subject to he furnishing fresh PR bond in the sum of Rs. 20,000/- with one or more sureties.

IA No. 4409/2022 & IA No. 4410/2022 stands disposed off.

5 I deem it appropriate to record appreciation for Advocate Sagar Rane, who has effectively represented the case of respondent no.3. The Legal Services Authority is directed to pay him the legal remuneration, within a period of six weeks from today.

(SMT. BHARATI DANGRE, J.)