

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.3509 OF 2023
IN
CRIMINAL APPEAL NO.1071 OF 2023**

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Avinash Ganesh PhatakAppellant
Versus
State of Maharashtra & Anr. Respondents

Mr. Kalpesh U. Patil, Advocate for the Applicant.
Mr. Prashant P. Jadhav, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 26th JUNE, 2024

P.C. :

1. This is an application for bail pending the Appeal. The Applicant was convicted by the Ld. Extra Joint District and Additional Sessions Judge, Karad, vide the judgment and order dated 25th August 2023, passed in Special Case No.53 of 2022. The Applicant was convicted under Section 354-A(i) of Indian Penal Code, Section 7 punishable under Section 8, as well as under Sections 11(ii) (iv) and 12 of Protection of Children from Sexual Offences Act, 2012. The major sentence imposed on him was for 3 years besides imposition of fine. He was acquitted from the

charges under sections 354, 354-B, 376, 376-AB of Indian Penal Code, and under Sections 3, 4, 5(1) and 6 of Protection of Children from Sexual Offence Act.

2. The allegations are that the Applicant was the husband of the tuition teacher of the victim who was around 7 years of age. The allegations are that in April 2022 he committed certain acts which would attract the aforementioned provisions. However after the evidence was led, the learned Trial Judge came to the conclusion that the major offences were not proved and the Applicant was convicted only for the lesser offences for which a maximum sentence was for 3 years.

3 Learned counsel for the Applicant submitted that the allegations are not true. The victim was accompanied by other students and it was not possible that the Applicant could have committed these acts in their presence. He submitted that after his conviction the Applicant was released on bail under Section 389 of Cr.P.C. by the Trial Court. The said order is in force till today. Learned counsel

submitted that the Applicant was on bail during the trial and he had not misused the liberty.

4. Considering these submissions and particularly taking into account the fact that the sentence is of 3 years within which period the Appeal is not likely to be heard and decided, the Applicant deserves to be released on bail during the pendency of this Appeal.

5. Till today, the State has not challenged the Judgment and order of acquittal against major offences. The remark shows that the Respondent No.2 is duly served.

6. Hence the following order:-

- (i) During the pendency and final disposal of the Criminal Appeal No.1071 of 2023, the Applicant is directed to be released on bail on his executing PR. Bond in the sum of Rs.30,000/- with one or two sureties in the like amount.

7. The Application is disposed of.

(SARANG V. KOTWAL, J.)