

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.418 OF 2024

IN

CRIMINAL APPEAL NO.301 OF 2024

Mohd. Ekabal Mohd. Ismail Shaikh : Applicant

Vs.

State Of Maharashtra And Anr. : Respondents

Adv. Grishma Lad a/w Adv. Shruti Mishra & Adv. Shivangi Singh, for the Applicant.

Adv. B. V. Holambe Patil, APP for the State.

Adv. Siya Chaudhry, appointed by Legal Aid, for the Respondent No.2.

CORAM : KISHORE C. SANT, J.

DATE : 28TH MARCH, 2024

P.C. :

1. Heard the parties.
2. This Application is for suspension of sentence and release of the Applicant on bail who is convicted by the Learned Special Judge POCSO Act, Greater Mumbai by judgment & Order dated 03/09/2021 in POCSO Case No.86 of 2017. The Applicant is held guilty of the offences punishable under Sections 10 of the POCSO, Sections 354 & 354-A of the Indian Penal Code. He is awarded a sentence of five years rigorous imprisonment and to pay fine of Rs.10,000/- in default to undergo R.I. for

3 months for offence under Section 10 of POCSO. For the offence punishable under Section 354 he is directed to undergo R.I. for one year and to pay fine of Rs.5,000/- in default R.I. for two months. No separate sentence is awarded for the offence punishable under Section 354-A.

3. Learned Advocate for the Applicant submits that this sentence is a short sentence. Out of five years, he has already suffered a sentence for two years and six months from the date of judgment. Even during the trial for some period he was in custody till he was granted bail i.e. from 28/12/2016 to 21/03/2017. She submits that the mental condition of the Applicant is not sound. She relied on the report of the Grant Medical College i.e. Psychological Test. IQ range of the Applicant is stated to be more than 70 and Mental Retardation is ruled out. In the Application it is averred on the basis of Online Government Disability that Degree of Mental Retardation is as borderline where IQ range is between 70 to 79 Intellectual Impairment is 25%. She thus submits that even on this ground case of the Applicant needs to be considered sympathetically.

4. Learned Advocate for the Respondent No.2 vehemently opposes the Application stating that the victim girl was only of 10 years of age when the incident took place. There is a CCTV footage which shows gravity of the offence. She thus prays for rejection of the Application.

5. Learned APP also opposes the Application. He submits that merely because the Applicant has suffered more than 50% of this sentence, is no ground to release the Applicant on bail.

6. After hearing, this Court is inclined to allow the Application as the Applicant has already suffered above 50% of this sentence and that during the trial he was on bail & there is no complaint of misuse of the liberty. Hence the following order.

ORDER

- (a) The Application stands allowed.
- (b) Substantive sentence awarded by the Learned Special Judge, under POCSO Act, Greater Mumbai by judgment & Order dated 03/09/2021 in POCSO Case No.86 of 2017 stands suspended.
- (c) The Applicant shall be released on bail on furnishing PR. bond and solvent surety in the sum of Rs.15,000/-.
- (d) Applicant shall be released on bail only on depositing the fine amount, if not already deposited, in the Trial Court.
- (e) Applicant shall not enter in Bandra area and shall not try to contact the victim or her relatives in any manner.

- (f) Applicant shall keep informed concerned Police Station about his residential address, mobile number etc. and other contact details till the final disposal of the Appeal.
- (g) Applicant shall keep informed about any change in above mentioned contact details immediately to the concerned Police Station.
- (h) Application stands disposed of.

(KISHORE C. SANT, J.)