

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

**INTERIM APPLICATION NO.2016 OF 2021
IN
APPEAL NO.669 OF 2021**

Mohd Kasim Riyasatali Shaikh .. Applicant
vs.
The State of Maharashtra & Anr. .. Respondents

Mrs. Nazneen Khatri with Khatri M. Adil for the Applicant.
Mr. J. P. Yagnik APP for the Respondent-State.

**CORAM: A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

DATE : 9th FEBRUARY, 2024

P. C.:-

- 1) This is an Application for suspension of sentence and releasing the Applicant on bail, during the pendency of Appeal.
- 2) Perusal of the evidence of victim coupled with the observations of the Medical Officer, *prima facie* indicates that it was an alleged act of fingering by the Applicant, however, as the victim was below the age of 12 years, Section 5(m) of the POCSO Act is applicable and therefore he has been convicted under Section 6 of the POCSO Act for imprisonment for life.
- 3) Ms. Khatri, learned Advocate for the Applicant submitted that, if the contention of the Applicant as noted hereinabove is accepted by this

Court then the conviction of the Applicant would be under Section 4(1) or (2) of the POCSO Act and the sentence imposed upon him ought not be imprisonment for life. *Prima facie*, we find substance in her contention.

4) Record indicates that the Applicant is in incarceration since date of his arrest i.e. 25th January 2016, and has undergone approximately eight years in incarceration as of today.

5) In view of above, during the pendency of Appeal we are inclined to suspend the substantive sentence imposed upon the Applicant and release him on bail.

5.1) Hence, the following order :

i) Applicant be released on bail in POCSO Special Case No.114 of 2016 arising out of C.R. No.42 of 2016, registered with Shivajinagar Police Station, Mumbai on his furnishing P.R. bond of Rs.25,000/- with one or more solvent local sureties to make up the amount.

ii) The procedure of furnishing bail bond and sureties be completed before the trial Court.

iii) After his release from the jail, the Applicant shall not enter the jurisdiction of Mumbai Police Commissionerate except for marking his presence to Shivaji Nagar Police Station, Mumbai as directed hereinbelow :-

a) After his release from jail, the Applicant shall attend the

Shivajinagar Police Station, Mumbai on every first Monday of the month between 10.00 am and 12.00 noon initially for a period of one year and, thereafter on every first Monday of every 3rd calendar month between 10.00 am and 12.00 noon till the disposal of the Appeal.

b) Applicant shall remove himself immediately from the jurisdiction of the Shivaji Nagar Police Station, Mumbai after marking his presence presently.

c) Before his actual release from jail, the Applicant shall give his prospective residential address along with landline and/or mobile number on which he could be contacted to Shivaji Nagar Police Station, Mumbai so also to the trial Court.

d) Applicant shall make available at the time of final hearing of the Appeal.

6) Interim Application is allowed in the aforesaid terms.

(SHYAM C. CHANDAK,J.)

(A. S. GADKARI, J.)