

rajshree

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.3304 OF 2023
IN
CRIMINAL APPEAL NO.1006 OF 2023**

Mozzam Ali Anjum Meman] .. Applicant
vs.
State of Maharashtra & Anr.] .. Respondents

Mr.Rumman Shaikh a/w Husen Shaikh and Ilsa Shaikh for the Applicant.

Mr.H.J. Dedhia, APP for the State.

Mr.M.A. Ansari, for Respondent No.2.

CORAM : BHARATI DANGRE, J

DATE : 11th October, 2023.

P.C.

1] The present Interim Application is taken out by the Appellant who seek suspension of sentence imposed upon him under impugned Judgment passed by the POCSO Special Court in POCSO Special Case No.396/2018, wherein the Applicant is convicted for committing offence punishable under Section 8 of the POCSO Act and directed to undergo imprisonment of 3 years and to pay fine of Rs.10,000/- in default to suffer imprisonment for 4 months. He also stand convicted for offence under Section 451 of the IPC and sentenced to suffer imprisonment for 1 year and to pay fine of Rs.5000/-, in default to suffer imprisonment for 2 months. Though he stand convicted under Section 354A of the IPC, but no sentence is imposed.

The sentences imposed are directed to be run concurrently.

- 2] Heard the learned counsel representing the parties.

It is the case of the prosecution that on the day of incident the accused gained a forceful entry in the house, when the victim was in the company of her sister and he hugged and kissed her. At the same time when the door bell rang, the grandmother made an entry in the house and the accused was found on the mezzanine floor and thereafter the incident was reported to police.

- 3] In order to establish its case, the prosecution has examined the victim as PW 2 when she narrated the incident that took place on 18.03.2018.

During her cross-examination, she has given admission to the following effect :-

"It will not be correct to say that I have never been out with the accused and that I never called him. I used to go out with the accused and do kissing and other things with him. Witness volunteers that all the things happened due to threats given by the accused.

I was occasionally having Whatsapp chat with the accused.

Question : All your relations with the accused about kissing and other kind of physical relations were kept secret from your parents?

It have been kept secret from my parents until sometime i.e. till the time I decided to tell them.

I have disclosed all the relations with the

accused to my parents after the incident and after registering of FIR.”

3] The aforesaid admission will have to be appreciated at the time when the Appeal is to be heard. It is the case of the prosecution that the accused barged in the house of the victim and forcibly embraced her and kissed her and that is why the conviction is awarded under Section 8 of the POCSO Act.

It is not the case of the prosecution as appearing in the version of the victim that the accused was unknown to her and the admissions recorded in the cross-examination, therefore, need appropriate appreciation at the time of hearing of Appeal.

4] Since the sentence imposed is for a fixed period and for the reasons recorded above, I deem it appropriate to suspend the same and direct release of the Applicant on bail.

Hence, the following order :

ORDER

- a) Interim Application is allowed.
- b) The conviction imposed upon the Applicant vide the impugned Judgment dated 23.06.2023 in POCSO Special Case No.396/2018, is hereby suspended during the pendency of the Appeal.
- c) The Mozzam Ali Anjum Meman shall be released on bail in connection with C.R.No.59 of 2018 (POCSO Special Case No.396/2018) registered with Cuffe Parade Police Station, on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.

- d) The Applicant shall not make any attempt to establish contact with the victim or in any manner influence her or create pressure upon her, during the pendency of the Appeal.
- e) Upon release, the Applicant shall furnish his contact number and permanent residential address to the Investigating Officer and shall keep him updated in case of any change.

[BHARATI DANGRE, J]