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

**CRIMINAL INTERIM APPLICATION NO.974 OF 2021
IN
CRIMINAL APPEAL NO.251 OF 2021**

1. Ashwin Mohanlal Parikh
2. Vimlaben Ashwin Parikh ...Applicants
Versus
State of Maharashtra and Anr. ...Respondents

Mr. Dinesh Tiwari a/w Mr. Mikhail Dey, Mr. Ansh Karnawat and Mr. Santosh Pawar i/b Dinesh D. Tiwari and Associates, for the Applicants.

Ms. S. V. Sonawane, A.P.P for the Respondent No.1 – State.

Ms. Ameeta Kuttikrishnan, Appointed Advocate for the Respondent No.2.

CORAM : REVATI MOHITE DERE, J.

DATE : 8th APRIL, 2021

P.C. :

1. Heard learned counsel for the parties.
2. By this application, the applicants seek suspension of their sentence and enlargement on bail, pending the hearing and final disposal of their appeal.
3. The Applicants vide Judgment and Order dated 11th March 2021 passed by learned Special Judge under P.O.C.S.O. Act, 2012, Greater

Bombay, in POCSO Special Case No.900 of 2013, have been convicted and sentenced as under:-

- for the offences punishable under Section 6 of the Protection of Children from Sexual Offences Act, to suffer rigorous imprisonment for 10 years and to pay fine of Rs.1,000/- each, in default of payment of fine, to undergo simple imprisonment for 1 month;
- for the offence punishable under Section 354 r/w Section 34 of the Indian Penal Code and Section 4 of the Protection of Children from Sexual Offences Act. However, no separate sentence has been imposed.
- the appellants were however acquitted of the offences punishable under Section 354 r/w Section 34 of the Indian Penal Code and Section 4 of the Protection of Children from Sexual Offences Act;
- No separate sentence was imposed for the offence punishable under Section 376 of the Indian Penal Code in view of Section 42 of the Protection of Children from Sexual Offences Act.

4. Learned Counsel for the applicants submits that the allegations against the applicants, aged 87 and 81 years respectively (husband and wife) are false and baseless. He submits that the evidence on record will show the falsity of the case. He submits that there are several inconsistencies in the evidence of witnesses, in particular, PW 1 and PW 2,

so also material omissions. He submits that PW 1 – mother of the prosecutrix had initially stated that applicant No.1 had inserted his finger in the private part of the prosecutrix, however, subsequently has stated that applicant No.2 also did the same act. He submits that the prosecutrix has only stated that the applicant No.1 touched her inappropriately on her private part and made no allegation as against applicant No.2 of inappropriate touching. Learned Counsel relied on paras 14, 15 and 16 of the cross-examination of PW 7 – Dr. Prajakta Ahire with respect to the medical evidence that has come on record. According to the learned counsel for the applicants the reason for falsely implicating the applicants was for taking over the house of the applicants, in which they are staying. Learned Counsel further submitted that considering the age of the applicants i.e. 87 and 81 years and the fact, that the applicants were on bail and also having regard to the evidence that has come on record, the applicants sentence be suspended and they be enlarged on bail.

5. Learned APP as well as learned appointed advocate for the respondent No.2 opposed the application.

6. Perused the papers. *Prima facie*, there are certain inconsistencies that have come on record in the evidence of PW 1 and PW

2. There are also certain omissions that have come on record in the evidence of PW 1 with respect to what was deposed to, by her in her examination-in-chief. The medical evidence on record will also have to be considered in particular, having regard to what is stated by PW 7 – Ahire in paras 14 to 16, of the cross-examination. It appears that initially when the FIR was lodged, the same was lodged for the offence punishable under Section 354 r/w Section 34 of the Indian Penal Code and subsequently Section 376 of the Indian Penal Code and provisions of POCSO were added. This Court had enlarged the said applicants on bail pending the trial. The said order is on page 11 of the aforesaid appeal.

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7. The applicants, aged 87 and 81 years respectively were on bail pending trial and have not abused or misused the liberty granted to them. *Prima facie*, having considered the evidence on record, the applicants have made out a case for suspending their sentence and enlargement on bail.

8. Considering the aforesaid, the application is allowed and the applicants sentence is suspended and they are enlarged on bail, pending the hearing and final disposal of their Appeal, on the following terms and conditions :

ORDER

- i) The Applicants be released on cash bail in the sum of Rs.25,000/- each, for a period of six weeks;
- ii) The Applicants shall within the said period of six weeks, furnish P.R. Bond in the sum of Rs.25,000/- each, with one or more sureties in the like amount.

9. The Application is allowed in the aforesaid terms and is accordingly disposed of.

10. The High Court Legal Services Committee, Mumbai, to pay the fees as per Rules to Ms. Ameeta Kuttikrishnan, learned appointed advocate, who has espoused the cause of the respondent No.2.

11. Copy of this order be forwarded to the High Court Legal Services Committee, for information and necessary action.

12. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.