

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

MC(Cril.A.) No. 2 of 2020

Ref:- Cril. Appeal No. 9 of 2020

Shri Yumnam Naocha, aged about 24 years, S/o
Yumnam Ranjit Singh of Pukhao Khabam Awang Leikai,
P.O. Pangei & P.S. Sagolmang Imphal East District,
Manipur – 795005.

... Petitioner/Appellant

-VERSUS-

The State of Manipur represented by the Chief Secretary,
(Home) Govt. of Manipur, Secretariat (Old Block),
Babupara, Imphal -795001.

... Respondent

BEFORE
HON'BLE MR. JUSTICE M.V. MURALIDARAN

For the Appellant	::	Mr. S. Bikash Sharma, Adv. Mr. T. Rajendra, Sr. Adv.
For the Respondent	::	Mr. H. Samarjit, Addl. PP
Date of Hearing and reserving Judgment & Order ::		12.10.2023
Date of Judgment & Order	::	30.10.2023

JUDGMENT AND ORDER
(CAV)

This petition has been filed by the petitioner under
Section 389 Cr.P.C. praying to suspend the judgment of conviction

dated 26.11.2019 and the order of sentence dated 29.11.2019 passed by the learned Special Judge (POCSO), Imphal East in Special Trial (POCSO) Case No.4 of 2017 and to release the petitioner on bail during the pendency of the appeal.

2. The petitioner, who has been arrayed as an accused in Special Trial (POCSO) Case No.4 of 2017 on the file of the learned Special Judge (POCSO), Imphal East, was convicted under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short, “the POCSO Act”) by the judgment dated 26.11.2019 and listed the case on 29.11.2019 for sentence hearing. On 29.11.2019, the petitioner was produced before the learned Special Judge, Imphal East and after hearing the petitioner and his counsel, the petitioner was sentenced to undergo rigorous imprisonment for a period of 12 years and to pay fine of Rs.10,000/- under Section 6 of POCSO Act and in default to undergo three months simple imprisonment. The learned Special Judge also ordered that the said fine amount if deposited, the same shall be given to the victim girl as compensation. That apart, the learned Special Judge also recommended for provision of victim compensation to the tune of Rs.5.00 lakh under Section 33(8) of POCSO Act to the victim. The learned Special Judge also ordered the period which has already undergone by the

petitioner in the judicial custody during the period of investigation as well as during the trial, if any, shall be set-off from the sentence awarded.

3. Aggrieved by the conviction and sentence imposed on the petitioner, the petitioner has filed Criminal Appeal No.9 of 2020 before this Court. Along with the appeal, the petitioner has filed petition seeking to suspend the sentence stating that he has a very good case on merits and is likely to succeed in the appeal filed by him.

4. Mr. S. Bikash Sharma, the learned counsel for the petitioner submitted that there are lot of infirmities in the impugned judgment and that the petitioner has got good case on merits to succeed. He would submit that the petitioner is in jail since the date of arrest on 10.11.2016 which was about 6 years and 11 months and have to spend another about 5 years and 1 month in the jail. He would submit that spending the time in the jail, there was no criminal record of the petitioner.

5. The learned counsel then submitted that release of the petitioner on bail by suspending the sentence shall not cause any inconvenience or prejudice to the prosecution. Further, the petitioner's parents are old aged and needs the assistance of the petitioner and his presence is highly necessary.

6. The learned counsel next submitted that the appeal would not be taken up for hearing in the near future and therefore, the petitioner is entitled to suspension of sentence pending appeal and that the petitioner undertakes to abide by the conditions imposed by this Court.

7. The learned counsel for the petitioner urged that detention of the petitioner during pendency of the appeal is a severe punishment to all his family members and, thus, prayed for suspension of sentence pending appeal. In support, the learned counsel placed reliance upon the judgment of the Delhi High Court in the case of *Pankaj Kumar Bhola v. Govt. of NCT of Delhi*, 2023 *Legal Eagle (DEL)* 91.

8. Per contra, Mr. H. Samarjit, the learned Additional Public Prosecutor submitted that the learned Special Judge after examination of both sides and taking into consideration the material evidence came to the conclusion that the prosecution has forced beyond reasonable doubt that the petitioner had committed penetrative sexual assault to the victim girl and that the accused has failed to prove even by preponderance of probability that he did not commit penetrative sexual assault and his plea of alibi.

9. The learned Additional Public Prosecutor further submitted that the petitioner resides near the victim in the same

locality and, if he is released on bail at this stage, the life and safety of the victim cannot be assured. The objective of the POCSO Act is to protect the innocent young children. Thus, a prayer has been made to reject the petition for suspension of sentence in the interest of justice and that the interest of the victim whose life has been scarred and damaged beyond redemption as the stigma of being a victim of sexual assault will remain for the remainder of her life.

10. This Court considered the rival submissions and also perused the materials available on record.

11. The petitioner was convicted under Section 6 of POCSO Act. Upon hearing the petitioner, the learned Special Judge sentenced the petitioner to suffer rigorous imprisonment for a period of 12 years and to pay a sum of Rs.10,000/- as fine and in default of payment of fine, the convict shall undergo simple imprisonment for a period of 3 months. The learned Special Judge also recommended Rs.5 lakh as victim compensation in terms of "Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes, 2018". The judgment of the trial Court is dated 26.11.2019 and sentence was imposed on 29.11.2019 and according to the petitioner, he was in jail since from 10.11.2016 i.e. from the date of arrest.

12. As could be seen from the grounds of appeal, the petitioner has challenged the judgment of the learned Special Judge on various grounds. The petitioner has raised a ground that the learned Special Judge has failed to appreciate the oral testimony of the prosecution witnesses in proper perspective and in view of lot of infirmities and lacuna in the evidence of the prosecution witnesses, the conviction cannot stand.

13. The petitioner also raised a ground that the prosecution has failed to establish that the petitioner is capable of performing sexual act by his examination by a competent doctor. In the absence of such evidence, convicting the appellant under the impugned conviction is not called for. The learned Special Judge failed to take into consideration the evidence of P.W.7- Doctor in proper perspective, as his evidence is so clear that there is no sign of any sexual intercourse or assault to the victim. Further, the statement of the victim when accepted as gospel truth does not fulfil the basic ingredient of penetrative sexual assault as defined in Section 3 of the POCSO Act. When the ingredient of penetrative sexual assault is not fulfilled, convicting the petitioner under Section 6 of the Act is not called for.

14. It is settled that when a convicted person is sentenced to a fixed period of sentence and the appellate Court

finds that due to practical reasons the appeal cannot be disposed of expeditiously, it can pass appropriate orders for suspension of sentence.

15. In *Pankaj Kumar Bhola*, supra, the Delhi High Court held as under:

“10. Considering the facts and circumstances of the case, as adverted to by the counsel for the appellant where they may have substantial issues to press in their appeal, but since the appeal is pending before this Court and will take time to be heard and adjudicated upon; as also the fact that the appellant has already served more than half of his sentence that too without having taken any interim bail; as also he has no previous conviction and his jail conduct is satisfactory, in view of the directions of the Hon’ble Supreme Court in Sonadhar v. The State of Chhattisgarh, SLP (Crl.) 529/2021 vide order dated 6th October, 2021, as well as Saudan Singh v. State of Uttar Pradesh, 2021 SCC OnLine SC 3259 (where the Hon’ble Supreme Court has observed that in cases other than life sentence cases, the broad parameter of 50 per cent of actual sentence undergone can be the basis of grant of bail), this Court deems it fit to suspend the sentence of the appellant.”

16. The aforesaid decision of the Delhi High Court squarely applies to the case on hand, as the petitioner is in jail from 10.11.2016 i.e. from the date of arrest. In other words, the petitioner is in jail for a period of 6 years 11 months, which is more than the half of sentence imposed on him.

17. In *Bhagwan Rama Shinde Gosai and others v. State of Gujarat*, (1999) 4 SCC 421, the Hon'ble Supreme Court held:

“3. When a convicted person is sentenced to a fixed period of sentence and when he files an appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances. Of course, if there is any statutory restriction against suspension of sentence it is a different matter. Similarly, when the sentence is life imprisonment the consideration for suspension of sentence could be of a different approach. But if for any reason the sentence of a limited duration cannot be suspended every endeavour should be made to dispose of the appeal on merits more so when a motion for expeditious hearing of the appeal is made in such cases. Otherwise the very valuable right of appeal would be an exercise in futility by efflux of time. When the appellate court finds that due to practical reasons such appeals cannot be disposed of expeditiously the appellate

court must bestow special concern in the matter of suspending the sentence, so as to make the appeal right, meaningful and effective. Of course, appellate courts can impose similar conditions when bail is granted.”

18. In *Union of India v. Ram Samujh and another*, (1999) 9 SCC 429, the Hon'ble Apex Court held that the jurisdiction of the Court to grant bail is circumscribed. The bail can be granted and sentence suspended in a case where there are reasonable grounds for believing that the accused is not guilty of the offence for which he is convicted and he is not likely to commit any offence while on bail and during the period of suspension of sentence.

19. In the instant case, the petitioner challenged the judgment of the trial Court on various grounds as could be seen from the grounds of appeal and *prima facie* the petitioner has got arguable case. This Court is not concerned with the merits of the appeal and the concern is only with regard to the point whether the petitioner is entitled to suspension of sentence pending appeal.

20. As stated supra, the Hon'ble Supreme Court in the case of *Bhagwan Rama Shinde Gosai* (supra), held that the prayer for suspension of sentence pending appeal should be considered liberally unless there is any statutory restriction.

21. Where an appeal is preferred against the conviction under Section 6 of the POCSO Act before the High Court, the High Court has ample power and discretion to suspend the sentence. However, that discretion has to be exercised judiciously depending upon the facts and circumstances of each case. While considering the suspension of sentence, each case has to be considered on the basis of the nature of the offence, the manner in which the occurrence had taken place, whether bail granted earlier had been misused. There is no straitjacket formula which could be applied in exercising discretion and the facts and circumstances of each case would govern the exercise of judicious discretion while considering an application filed by a convict under Section 389 Cr.P.C.

22. When this Court analysed the instant case in the light of the settled principles, this Court is of the view that the appeal is of the year 2020 and due to practical reasons, the appeal cannot be taken up in the near future and disposed of expeditiously. According to the petitioner, the petitioner is in jail from 10.11.2016 and the petitioner has spent considerable time in jail.

23. When an appellate Court is in seisin of an application for suspension of sentence with an assertion that the convict has served half of the sentence, it can take into consideration his

criminal antecedents. In the instant case, no criminal record of the petitioner has been produced by the prosecution. The only plea of the prosecution is that the petitioner resides near the victim in the same locality and if he is released on bail, the life of the victim is danger. Merely because the petitioner is residing in the same locality of the victim, the claim of bail cannot be rejected on the ground that the victim is residing in the same locality.

24. As stated supra, the petitioner has spent considerable time i.e., nearly 6 years 11 months and during that period no criminal antecedents has been shown by the prosecution.

25. In the light of the decision of the Hon'ble Supreme Court in the case of *Bhagwan Rama Shinde Gosai* (supra), and the fact remains that the present appeal would take substantial time to come up for final hearing, without expressing any opinion on the merits of the appeal, this Court is inclined to suspend the sentence imposed on the appellant, subject to stringent conditions.

26. Accordingly, the sentence imposed on the petitioner in Special Trial (POCSO) Case No.4 of 2017 dated 29.11.2019 on the file of the learned Special Judge (POCSO), Imphal East alone

is suspended, subject to the compliance of the following conditions by the petitioner:

(a) The petitioner is directed to be released on bail on his furnishing a personal bond for Rs.50,000/- (Rupees Fifty Thousand) with two sureties in the like sum to the satisfaction of the learned Special Judge (POCSO), Imphal East.

(b) The petitioner shall provide permanent address to the learned Special Judge (POCSO), Imphal East. The appellant shall intimate the Court by way of an affidavit and to the Investigating Officer regarding any change in residential address.

(c) The petitioner, on his being enlarged on bail, is directed to report before the learned Special Judge (POCSO), Imphal East on the first working day of every month at 10.00 A.M. without fail.

(d) The petitioner is directed to appear before this Court on all hearing dates.

(e) The petitioner shall not indulge in any criminal activities during the period of suspension of sentence. He shall not communicate with or come in contact with the victim or any member of the victim's family or tamper with the evidence of the case.

(f) The petitioner shall not leave the jurisdiction of the Court and shall ordinarily reside at a place of his residence.

(g) The petitioner shall provide all mobile numbers to the Investigating Officer concerned which shall be kept in working condition at all times and shall not switch off or change the mobile number without prior intimation to the Investigating Officer concerned. The mobile location be kept on at all times.

(h) In case of violation of any condition, the prosecution may ask for cancellation of bail.

(g) Needless to state, any observation touching the merits of the case is purely for the purposes of deciding the question of suspension of sentence and shall not be construed as an expression on merits of the matter.

27. Accordingly, MC (Crl. Appeal) No.2 of 2020 in Criminal Appeal No.9 of 2020 is allowed.

JUDGE

FR/NFR

Sushil