

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

938 CRIMINAL APPLICATION NO.2972 OF 2022
IN
CRIMINAL APPEAL NO. 573 OF 2021

ABDUL TAKHIL S/O. ABDUL KHALIL
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Applicant : Mr. R S Deshmukh Sr. Counsel
i/b Mr. Deshmukh Devang R.

APP for Respondent 1 : Mr. S W Munde
Mr. A N Patale advocate for respondent no.2 (appointed)

...

CORAM : KISHORE C. SANT, J.

Dated : December 15, 2022

...

PER COURT :-

1. Heard learned Senior counsel Mr. Deshmukh for the applicant, Mr. Munde, the learned APP for respondent no.1/State and learned appointed Advocate Mr. Patale for respondent no.2.

2. By way of this application, the applicant is praying for suspension of the sentence and his release on bail in connection with the judgment and order dated 29.9.2021 passed by the learned Extra District Judge-1 & A.S.J., Special (POCSO) Court, Nanded in Special (POCSO) case no.49 of 2018. Against the said judgment

aaa/-

and order, criminal appeal bearing No.573 of 2021 is already preferred and is admitted. It is pointed out that his earlier application seeking suspension of the sentence has been rejected by this Court. The applicant had preferred another application bearing criminal application no.2672 of 2021. That was disposed off by this Court. However, it was made clear that if the appeal is not heard within a period of six months, thereafter the applicant/appellant is at liberty to move the court for suspension of the sentence.

3. Main ground seeking suspension of sentence is that, the applicant/appellant is convicted and is sentenced to suffer 7 years of imprisonment for the offence punishable under section 376 (2)(i) of the Indian Penal Code and under sections 3 and 4 of the POCSO Act. The applicant is arrested on 22.6.2018 and since then he is in jail. Thus, he had suffered more than 4 years and 5 months as of now as against the total period of sentence of 7 years. He submits that the appeal is still not likely to be heard considering the pendency of

aaa/-

the matters. Learned counsel submits that, the applicant will file an undertaking that he will not enter the vicinity where the victim is residing and where she is attending the school and college.

4. Learned APP opposes the application saying that the age of the victim was only seven years at the time of the incident. There is still possibility of the applicant threatening the witnesses and the victim.

5. Learned Advocate for respondent no.2 also submits that at the time of the incident, age of the victim was only seven years and, therefore, the applicant ought to have convicted for the offence punishable under sections 376-AB of the IPC, wherein punishment prescribed is life imprisonment and opposes the application.

6. However, it is seen that neither the State nor respondent no.2 has filed any appeal for enhancement of the sentence nor there was any attempt made in the trial court to frame the charge under section 376-AB.

aaa/-

7. Considering the above position and considering that the applicant has already undergone four years and five months of sentence out of seven years and since there are no chances of hearing of the appeal, this Court deems it proper to allow the application with certain conditions. Hence, following order.

O R D E R

- i. Criminal application No.2972 of 2022 in Criminal appeal no.573 of 2021 is allowed.
- ii. Pending the criminal appeal No.573 of 2021, the substantive sentence awarded by the Extra District Judge-1 and A.S.J. Special (POCSO) Court, Nanded in Special (POCSO) Case No.49 of 2018 is hereby suspended.
- iii. The applicant/appeallant be released on bail on furnishing P.R.Bond in the sum of Rs.15,000/- with two solvent sureties of the like amount.
- iv. The applicant shall file an undertaking to this Court that he shall be liable for cancellation of bail in case, he is found indulging into any similar type of acts in future. He shall further file an undertaking that he will not try to

aaa/-

contact in any manner the victim or any of her relatives, in future.

- v. The applicant shall not enter within the limits of Degloor Naka, Khadakpura, Nanded and near by vicinity and he will stay at Biloli only.
- vi. Since Advocate Mr. A.N Patale is appointed to represent the cause of respondent no.2 by the Legal Aid Committee, his professional fees is quantified at Rs.2,500/- for this application to be paid by the High Court Legal Services Sub-Committee, Aurangabad.
- vii. The application is disposed off.

(KISHORE C. SANT, J.)

...