

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

909 CRIMINAL APPLICATION NO. 368 OF 2023  
IN APPEAL/319/2017 WITH APPEAL/319/2017

HAKIM HAMID SHAIKH (C-8525)  
VERSUS  
THE STATE OF MAHARASHTRA

.....

Advocate for Applicant : Mr. Vithal P. Kadam  
APP for Respondent-State : Mrs. V. S. Choudhari

.....

WITH  
CRIMINAL APPLICATION NO. 262 OF 2015  
IN APPEAL/792/2014 WITH APPEAL/792/2014

HAMID BASHUMIYA SHAIKH  
VERSUS  
THE STATE OF MAHARASHTRA AND ANOTHER

.....

Advocate for Applicant : Mr. S. S. Choudhary  
APP for Respondent No.1-State : Mrs. V. S. Choudhari

.....

**CORAM : SMT. VIBHA KANKANWADI AND  
ABHAY S. WAGHWASE, JJ.**

**DATED : 09 FEBRUARY, 2023**

**PER COURT :-**

1. Criminal Application No.368 of 2023 has been filed for suspension of sentence by original accused no.2. He is challenging his conviction by learned Special Judge and Additional Sessions Judge, Latur in Sessions Case No. 8 of 2014. The present appellant-applicant

has been convicted for the offence punishable under Section 376(2) (g) read with 34 of the Indian Penal Code (IPC) and has been sentenced to suffer rigorous imprisonment for life and to pay fine of Rs.30,000/-, in default to suffer simple imprisonment for one year.

2. Heard learned Advocate Mr. V. P. Kadam for accused no.2 i.e. the applicant in Criminal Application No. 368 of 2023, Mr. S. S. Choudhary for accused no.1 i.e. the applicant in Criminal Application No. 262 of 2015 and Mrs. V. S. Choudhari for the State.

3. We have gone through the evidence with the help of learned Advocates for both sides. Before turning to the facts of the case, it is to be mentioned here that original accused no. 1 Hamid had filed Criminal Appeal No. 792 of 2014 and by Criminal Application No. 7012 of 2014, he had prayed for suspension of sentence and releasing him on bail. This Court by order dated 26.02.2015 had granted the said application. However, it appears that the accused no.2 Hakim had not filed appeal and therefore, ultimately in 2016 he filed appeal with application for condonation of delay of 556 days. That application came to be allowed on 13.07.2017 and the delay stood condoned. His appeal came to be registered as Criminal Appeal No. 319 of 2017. Yet, it is to be noted that the matter was not got for

circulation for much period. His appeal came to be admitted on 11.01.2023. Thereafter, it appears that on 20.01.2023, Criminal Application No. 368 of 2023 for suspension of sentence and releasing the applicant on bail has been filed.

4. Learned Advocate appointed through legal aid to represent the applicant in Criminal Application No. 368 of 2023 submits that the appellant-applicant is in jail since 13.09.2012. Therefore, he has undergone more than 10 years of imprisonment and therefore he is taking benefit of the directions given by the Hon'ble Supreme Court in SMW (CRL) No.4/2021 with Misc. Application No. 764 of 2022 in Criminal Appeal No. 491 of 2022 (*Suleman v. The State of Uttar Pradesh*) and the order that was passed on 15.09.2022 wherein directions were given that in respect of convicts having undergone more than 10 years imprisonment in life sentence cases, unless there are reasons to deny bail, should be granted bail. Learned Advocate for the applicant submits that learned Special Judge has wrongly appreciated the evidence and therefore the conviction that has been awarded, deserves to be set aside. The appellant has good case on merits and therefore, the sentence needs to be suspended till decision of the appeal.

5. Learned APP strenuously opposed and supports the reasons given by learned Special Judge.

6. At the outset, it is to be noted that those directions by the Hon'ble Supreme Court in SMW (CRL) No.4/2021 clearly indicate that if there are reasons to deny bail, then bail should not be granted in respect of those convicts also who have undergone more than 10 years of imprisonment in life sentence cases. The second point which we would like to put on record is that this Court is dealing with the jail appeals of 2015. Here, the appellant himself has filed the appeal belatedly. However, taking into consideration the fact that he is in jail since 2012 and the co-accused had filed criminal appeal in 2014 and he has been released on bail, the appeal filed by the appellant-original accused no.2 together with the appeal filed by original accused no.1 will have to be heard together and it can be expedited.

7. Thirdly, if we consider the evidence on record which was also considered by this Court when bail was granted to accused no.1, it seems that at the time of incident the prosecutrix was 12 years of age and she was carrying pregnancy. It was alleged that both accused had committed rape on her and as regards the DNA test report is concerned, which was approved by the prosecution, it undoubtedly

suggests that present applicant-accused no.2 is the biological father of the child delivered by the prosecutrix. That means the prosecutrix who was aged 12 years appears to have been forced under the circumstances to deliver a child. *Prima facie* there is evidence against the present applicant-accused no.2 showing that he has committed heinous crime and that is the reason to deny him bail. This Court has earlier also observed that there is evidence against the present applicant-accused no.2 but then it was also observed that though prosecutrix had stated that even accused no.1 had committed rape on her, her version was not corroborated by medical evidence. It was also taken into consideration that the medical evidence of accused no.1 showed that he was incapable of performing sexual intercourse. He was then aged 73 years. That prompted this Court to release him on bail. However, the fact with the present applicant-accused no.2 is different as aforesaid. In view of these circumstances, the case of the applicant-accused no.2 cannot be taken to be a fit case where the sentence should be suspended. Criminal Application No. 368 of 2023 stands rejected. However, the appeal is expedited.

8. We take the opportunity to pass further order in respect of even the appeal filed by accused no.1 i.e. Criminal Appeal No. 792 of 2014 wherein the father of victim has been made respondent no.2 as the

learned Special Judge has directed the fine amount to be paid to the victim through her guardian as compensation. Unfortunately, learned Advocate for the said appellant has disclosed the identity of the father, thereby even the identity of the victim can be said to have been disclosed. Therefore, we direct the learned Advocate for the appellant to mask the name of respondent no.2. Further, in the appeal filed by accused no.2 i.e. Criminal Appeal No. 319 of 2017, the informant who might be major now, has not been made party respondent. Therefore, we direct learned Advocate for the appellant in Criminal Appeal No. 319 of 2017 to add the victim/prosecutrix as party respondent by taking all precautions for not disclosing her identity. The said amendment to be carried out forthwith.

9. Further, it appears that notice in respect of Criminal Appeal No. 792 of 2014 was also not given to respondent no.2. Hence, notice of both appeals be given to the respective respondent no.2, to be made returnable on 27.02.2023.

**[ABHAY S. WAGHWASE, J.]**

**[SMT. VIBHA KANKANWADI, J.]**