

Vinita

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 12 OF 2023

IN

CRIMINAL APPEAL NO. 4 OF 2023.

SIDHARTH @ SIDHU GOSAVI (PRE.
IN JU. CUS., CENTRAL JAIL, ... Applicant/Appellant.
COLVALE) REP. BY FRIEND SIDDESH
GOSAVI
VS
THE STATE OF GOA THR. POLICE
INSPECTOR, VASCO POLICE ...Respondent.
STATION.

Mr. S. S. Kantak, Senior Advocate with Mr. A. Gosavi, Ms. N.Pai,
Ms. S. Naik Desai and Ms. K. Naik, Advocates for the Appellant.
Mr.P. Faldessai, Addl. Public Prosecutor for the Respondents.

CORAM: B. P. COLABAWALLA, J

DATED: 30th JANUARY 2023

P.C.

1. The above Criminal Appeal challenges the judgment and orders dated 19th September 2022 and 26th September 2022 passed by the Fast Track Special Court (POCSO), at Panaji in Sessions Case (Ors) No. 29/2022. By the impugned judgment and orders the Appellant was convicted of the offences punishable under Section 363 and 376 of the Indian Penal Code, 1860(IPC) and Section 4 of the Protection of Children from Sexual Offences Act, 2012(POCSO Act). The Appellant was acquitted of the offence punishable under Section 323 of the IPC. The Appellant is convicted (a) under section 363 of the

IPC and sentenced to undergo 3 years of rigorous imprisonment; (b) under Section 376 of the IPC and sentenced to undergo 10 years of rigorous imprisonment; and (c) under Section 4 of POCSO Act and sentenced to undergo 10 years rigorous imprisonment. The sentences are to run concurrently.

2. This Appeal was admitted by this Court on 21st November 2022.

3. Today what has come up before me is the application filed by the Appellant for suspension of sentence and to direct that the Appellant be released on bail.

4. I have heard the learned Senior Counsel appearing on behalf of the Appellant and as well as the learned Addl. Public Prosecutor appearing on behalf of the State.

5. It is not in dispute that the Appellant was out on bail during the entire period of the trial and has been incarcerated only when he surrendered upon his conviction. The impugned judgment and order *prima facie* also appears to have convicted the Appellant on the basis of the statement of the Complainant recorded under Section 164 of the Cr.P.C. and also on a statement made before the Police by the

Appellant, and which the prosecution termed as a discovery under Section 27 of the Indian Evidence Act, 1872.

6. On going through the impugned judgment, I find that an arguable case is made out. At this stage, I do not want to comment upon the merits of the impugned judgment. Suffice it to state that considering the facts and circumstances of the case and after going through the impugned judgment, I am satisfied that the substantive sentences imposed by the trial Court ought to be suspended and the applicant be released on bail. I have taken this view in the light of the decision of the Hon'ble Supreme Court in the case of ***Bhagwan Rama Shinde Gosai and others Vs State of Gujarat***¹ wherein the Supreme Court has clearly opined that 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. The Hon'ble Supreme Court has further clarified that if there is any statutory restriction against suspension of sentence it is a different matter. In other words, what the the Supreme Court has opined is that when the sentence is for fixed period, the suspension of sentence should be the norm and refusal thereof should be the exception. This proposition has once again been reiterated by the

¹ (1999) 4 SCC 421

Hon'ble Supreme Court in the case of ***the State of Maharashtra Vs Gajanan and another.***²

7. In the facts and circumstances of the present case, as mentioned earlier, the Appellant was released on bail during the pendency of the trial and it is not the prosecution's case that he has misused his liberty. Considering that the Appellant has been sentenced to suffer imprisonment for a total period of 10 years and the present Appeal, due to pendency of the cases, may not be expeditiously decided, this is a fit case where the sentence ought to be suspended and the Appellant be released on bail.

8. In these circumstances, it is ordered as follows:-

ORDER

- i. That the substantive sentence imposed against the Appellant vide judgment and order dated 26th September 2022 in Sessions Case(ors) No. 29/2022 is suspended pending the hearing and final disposal of the Appeal.
- ii. The Appellant is ordered to be released on bail on him executing a PR bond of Rs. 25,000/-with one or two sureties in the like amount to the satisfaction of the Registrar (Judicial) of this

² (2003) 12 SCC 432

Court.

- iii. The Appellant shall report to the Investigating Officer of the Vasco Police Station on every Wednesday at 11.00 am till the above Appeal is finally disposed of.
- iv. The Appellant shall keep the Investigating Officer informed of his current address and mobile contact number and if there is any change, the same shall be immediately updated and informed to the Investigating Officer.
- v. If there is any default in complying with the aforesaid conditions, the prosecution shall be at liberty to file an application seeking cancellation of bail granted by this order.

9. Criminal Misc. Application is disposed of in the aforesaid terms.

10. This order will be digitally signed by the Private Secretary/Personal Assistant of this Court. All concerned will act on the production by fax or email of a digitally signed copy of this order.

B. P. COLABAWALLA, J

VINITA VIKAS NAIK Digitally signed by VINITA VIKAS
NAIK
Date: 2023.01.30 18:15:00 +05'30'