



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 626 OF 2024
IN
CRIMINAL APPEAL NO. 737 OF 2023

Akash Gopinath Kale
Age 18 years, Occu. Education,
R/o Sarangpur, Tq. Gangapur,
District Aurangabad.

... Applicant

Versus

1. The State of Maharashtra
through Police Station Pachod,
Taluka Paithan, Dist. Aurangabad.

2. XYZ

... Respondents

.....
Mr. S. B. Bhapkar, Advocate for the Applicant.
Mr. S. M. Ganachari, APP for Respondent-State.
Ms. Pratibha Suryawanshi, Advocate for Respondent No.2
(appointed)

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CORAM : ABHAY S. WAGHWASE, J.

DATED : 27.02.2024

ORDER :

1. This is an application for early hearing.

2. Learned counsel for the applicant/appellant submits that
applicant has been convicted by Special Judge (POCSO), Aurangabad
in Special Case (POCSO) No. 171 of 2017 by order dated 02.08.2023,

against which appeal has been preferred and the same is pending. He pointed out that further, Criminal Application No. 3157 of 2023 for suspension of substantive sentence was also moved, but the Court was not inclined to suspend the sentence during pendency of appeal and even not inclined to release applicant on bail and there is order to that effect dated 31.10.2023. He further submitted that the Hon'ble Apex Court in the case of ***Bhagwan Rama Shinde Gosai and others v. State of Gujarat*** (1999) 4 SCC 421 had held that if sentence is for a fixed period, then bail should be granted and in case it is refused, then appeal should be heard expeditiously. He further pointed out that here, bail has not been granted. Applicant is a young boy and is having better future and also has a good case on merits and therefore, prayers for early hearing.

3. While opposing relief of early hearing, learned APP submitted that no exceptional case is made out for out of turn hearing and hence he prays to reject the application. However, he concedes that as matter pertains to jail appeal, date can be fixed.

4. After considering the submissions, it seems that by virtue of conviction order dated 02.08.2023 passed in Special Case (POCSO) No. 171 of 2017, present applicant came to be convicted for offence

punishable under Section 376(2) of the Indian Penal Code. It seems that against said judgment, apart from preferring appeal, application bearing no. 3157 of 2023 was pressed into service praying to suspend the sentence and grant bail. However, the predecessor of this court, by order dated 31.10.2023, refused to grant both the reliefs i.e. suspension of sentence as well as of bail. Now recourse is taken to the above ruling of the Hon'ble Apex Court wherein it has been held that prayers for suspension of sentence pending appeal should be considered liberally unless there is no statutory restriction. It is further observed that if sentence of limited duration is not suspended, matter should be expedited.

5. Here, conviction is recorded for 10 years for offence under Section 376(2) of IPC. Therefore, it is clear that sentence is not for limited duration. However, it being appeal wherein appellant is in jail, office to place the matter for final hearing in the first week of April 2024. Application is disposed off.

[ABHAY S. WAGHWASE, J.]