



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

**CRIMINAL APPLICATION NO. 4615 OF 2023
IN
CRIMINAL APPEAL/1203/2023**

Shivaji s/o. Ramchandra Gore
Age: 32 years, Occu.: Agriculturist,
R/o. : Suldali (Khurd), Taluka : Sengaoon,
District : Hingoli. ..Applicant

Versus

The State of Maharashtra
Through Police Inspector,
Goregaon Police Station, Goregaon,
Taluka : Sengaoon, District : Hingoli. ..Respondent

.....
Advocate for Applicant : Mr. Surendra V. Suryawanshi
APP for Respondent : Mr.S.M.Ganachari
.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 02 JANUARY, 2024

PRONOUNCED ON : 03 JANUARY, 2024

ORDER :

1. Vide instant application, there are prayers raised by applicant / appellant for suspension of sentence and grant of bail during pendency of Criminal Appeal No.1203 of 2023.
2. Learned Counsel for the applicant submitted that applicant was chargesheeted for commission of offence under Sections 354-A and

448 of the Indian Penal Code (IPC) alongwith Sections 7 and 8 of Protection of Children from Sexual Offences Act 2012 (POCSO Act). and tried by the learned Special Court and Additional Sessions Judge, Hingoli and held guilty and convicted. He points out that, infact conviction was based on sole testimony. That there is no independent corroboration. That merely seeing applicant running, he is apprehended, tried and also held guilty. According to him, he was on bail during the trial. He has a strong case on merits and as appeal would take long time to be heard and decided, he prays for suspension of substantive sentence as well as grant of bail.

3. While opposing the application, learned APP would point out that applicant is proved to be guilty of serious charges including charge under the POCSO Act. Prosecution has proved victim to be a minor. That her testimony in the trial Court being truthful coupled with her statement under Section 164 of the Code of Criminal Procedure (Cr.P.C.), the learned trial Court has rightly convicted applicant and so he prays to reject the application.

4. This Court is dealing with provisions under Section 389 of the Cr.P.C. before touching to the merits of the case, which pertains to suspension of sentence and grant of bail during pendency of appeal.

There are certain settled principles, which are to be borne in mind while exercising above powers. Law on this point is enumerated as under :

There are catena of judgments on above point and a few could be named as *Rama Narang v. Ramesh Narang and others*; (1995) 2 SCC 513; *Rajesh Rajan Yadav alias Pappu Yadav v. CBI*; (2007) 1 SCC 70 and *Sidhartha Vashisht alias Manu Sharma v. State (NCT of Delhi)*; (2008) 5 SCC 230 wherein scope, object and purport of Section 389 of the Cr.P.C. has been distinctly and lucidly discussed.

Very recently, the Hon'ble Apex Court in the case of *Omprakash Sahni v. Jai Shankar Chaudhary and another*; (2023) LiveLaw SC 389 has elaborately dealt with the precedent on above provision and after dealing with above referred cases and other cases namely, *Ash Mohammad v. Shiv Raj Singh alias Lalla Babu and another*; (2012) 9 SCC 446; *Bhagwan Rama Shinde Gosai and Others v. State of Gujarat*; (1999) 4 SCC 421; *State of Haryana v. Hasmat*; [(2004) 6 SCC 175]; *Vijay Kumar v. Narendra and Others*; [(2002) 9 SCC 364]; *Atul Tripathi v. State of Uttar Pradesh and Others*; (2014) 9 SCC 177; *Kishori Lal v. Rupa and Others*; (2004) 7 SCC 638; *Ramji Prasad v. Rattan Kumar Jaiswal and Another*; (2002) 9 SCC 366; *Vasant*

Tukaram Pawar v. State of Maharashtra; (2005) 5 SCC 281 and ***Gomti v. Thakurdas and Others;*** (2007) 11 SCC 160, culled out following propositions in para 33 of the judgment which is as under:

“33. Bearing in mind the aforesaid principles of law, the endeavour on the part of the Court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the Trial Court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the above said question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually take very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the Court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The Appellate Court should not reappreciate the evidence at the stage of Section 389 of the CrPC and try to pick up few lacunas or loopholes here and there in the case of the prosecution. Such would not be a correct approach.”

5. Therefore, the legal proposition that is settled is that though it is a discretionary power, it is expected to be exercised judiciously and in only such cases in which circumstances and reasons exist to grant

such relief. Ultimately, it all depends on the facts and circumstances of each case and there is no straight jacket formula or absolute rule for grant or refusal. However, in the case of ***Vijay Kumar*** (supra) as well as ***Atul Tripathi*** (supra), it has been held that court should consider factors like nature of accusation, manner in which the crime is alleged to have been committed, gravity of offence, age, criminal antecedents of the convict, desirability of releasing the accused on bail by suspending the sentence etc.

6. Keeping above settled legal position in mind and on applying the same with the facts and circumstance of the case in hand, it is emerging that PW3 victim is shown to be a minor and there is no challenge or dispute to that extent. Sum and substance of accusation is that finding the victim alone in the house of her grandparents where she had been for Diwali vacation, applicant, a neighbour of her grandfather, seems to have entered the house and has allegedly touched her breast. The girl seems to have cried thereby attracting attention of villagers. According to prosecution, applicant was seen running out of the house and hence was apprehended and on investigation, challaned and finally held guilty by the learned Special Court and Additional Sessions Judge, Hingoli.

7. It seems to be a case wherein victim, who had come to visit her grandparents, on finding alone, has been sexually abused in the manner narrated above. Conviction seems to have been recorded on 13-12-2023. It is brought to the notice of this Court that applicant was on bail during the trial. Learned APP does not dispute the same.

8. Taking into consideration above material and that the appeal would take much more time, relief as prayed deserves to be granted. Accordingly, following order is passed :

ORDER

(I) Criminal Application stands allowed.

(II) The substantive sentence imposed on the applicant in Special Case (POCSO) No.10 of 2018 by the learned Special Court and Additional Sessions Judge, Hingoli on 13-12-2023 stands suspended till the final hearing and disposal of Criminal Appeal No.1203 of 2023.

(III) The applicant Shivaji s/o. Ramchandra Gore be released on P.R. Bond of Rs.15,000/- (Rs. Fifteen thousand only) with one solvent surety in the like amount.

(IV) The applicant shall not commit any criminal activity.

(V) The applicant shall remain present before the learned trial Judge once in six months, till final hearing and disposal of the appeal, commencing from the date he

tenders bail papers and thereafter, the trial Judge to fix dates for his subsequent appearances.

(VI) In case of two consecutive defaults on the part of the applicant to remain present before the trial Court, the trial Court to inform this Court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of the bail granted to the applicant.

(VII) Bail before the trial Court.

(ABHAY S. WAGHWASE)
JUDGE