

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.4508 OF 2022
IN
CRIMINAL APPEAL NO.177 OF 2021

Gopal @ Bhaiya Duryodhan @ Annasaheb Patil
Through His Mother Sou. Girijabai Duryodhan Patil : Applicant
Vs.
State of Maharashtra & Anr. : Respondents

Adv. A. A. Jadhavar a/w Adv. Amit Yadav, for the Applicant.
Mrs. M.R. Tidke, APP for the State.
Adv. Lokesh Zade, for the Respondent No.2.

CORAM : KISHORE C. SANT, J.

DATE : 28TH FEBRUARY, 2024

P.C. :

1. This Application is preferred seeking suspension of sentence and release of the Applicant on bail. The Applicant is held guilty for the offence punishable under Section 323 of the Indian Penal Code and Sections 6, 8 & 12 of the POCSO Act. He is sentenced as below:-

Sr. No.	Sections	Punishment	Fine Amount
1.	323 of IPC	1 month	Rs. 500/-, in default, to undergo S.I. for ten days.
2.	6 of POCSO Act	10 years	Rs.10,000/-, in default, to undergo R.I. for six months.

3.	8 of POCSO Act	3 years	Rs.500/-, in default, to undergo R.I. for one month.
4.	12 of POCSO Act	3 years	Rs.500/-, in default, to undergo R.I. for one month.

2. The Applicant is not convicted under Section 376(2)(i) and 376 (2) (f) of the I.P.C. The accused was further directed to pay Rs. 50,000/- to the victim as a compensation.

3. This Application is preferred mainly on the ground that maximum sentence awarded is 10 years and to pay the amount of fine Rs.10,000/-. The Applicant is in jail since 1st April, 2018. It is submitted that thus the Applicant has completed almost 6 years out of sentence of 10 years. His period of remission is to be considered, when he has suffered sentence more than 6 years.

4. Learned Advocate for the Applicant relied upon the judgment reported 2021 SCC OnLine SC 3259 in the case of ***Saudan Singh Vs. State of Uttar Pradesh***. He relied upon another order passed by Division Bench of this Court in the matter of ***Vaibhav Prabhakar Shelar Vs. The State of Maharashtra*** in Interim Application No.1530 of 2023 in Criminal Appeal No.964 of 2022. The Apex Court in the matter of ***Saudan Singh (supra)*** held that while considering the Application for bail and suspension of sentence one of the

considerations is whether the Applicant has suffered more than 50% of the sentence. The paragraph 7 as under:

“7. We may note that there may be even convicts in custody in case other than life sentence cases and in those cases again the broad parameter of 50 per cent of the actual sentence undergone can be the basis for grant of bail.”

5. Learned Advocate thus prays for suspension of sentence & release of the Applicant on bail.

6. Learned APP opposes the said prayer stating that the Applicant is involved in a serious crime. He is found guilty by the Trial Court on the basis of the evidence. It is not shown that the judgment is either perverse or is based on no evidence. If the Applicant is released on bail it may give wrong signal to the society. There is also apprehension that the victim girl may feel unsafe, as the Applicant and victim are from the same locality. Applicant is also cousin of the victim. It was prayed that under such circumstances the Application deserves to be dismissed.

7. Learned Advocate for the Respondent No.2 also vehemently opposes the Application. He states that the offences are duly proved the victim was a child age 9 years when the incident was happened. Even today she is a minor. If the Applicant is released, that will have serious impact over the mind of the victim.

8. This Court has considered all these submissions. Since the Applicant has served more than 60% of the sentence and when there is no chance of the Appeal coming up for final hearing in the near future, it is desirable to release the Applicant on bail. A care can be taken of the concern of the victim by imposing certain conditions on the Applicant. This Court has also considered the judgment in the case of *Saudan Singh (supra)*. Hence, the following order.

ORDER

- a) The Application stands allowed.
- b) The sentence as awarded by the learned Ad-hoc Special Judge-I, Barshi, in Special Case No.62 of 2020, for the offences punishable under Section 323 of the I.P.C. & under Sections 4, 6 & 8 of the POCSO Act stands suspended, subject of payment of fine, if not already deposited. The amount of fine as compensation also shall be deposited in the Sessions Court Barshi.
- c) The Applicant shall be released on bail on furnishing P.R. bond and solvent surety in the sum of Rs.15,000/-, subject to condition that if the amount of fine is not deposited the same shall be deposited in the Sessions Court Barshi.

- d) The Applicant shall stay at least 100 k.m. away from the place where the victim resides, except for recording attendance with the police station.
- e) The Applicant shall not try to contact victim or any person from her family and witnesses.
- f) The Applicant shall mark his presence before the concerned Police Station once in month i.e. on every 1st Sunday at 11.00.a.m.
- g) The Applicant shall keep informed concerned Police Station about his residential address, mobile number etc. and other contact details till the final disposal of the Appeal.
- h) The Applicant shall keep informed about any change in above mentioned contact details immediately to the concerned Police Station.
- h) The Applicant stands disposed of.

(KISHORE C. SANT, J.)