

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
IN ITS CRIMINAL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO. 865 OF 2023
IN
CRIMINAL APPEAL NO. 1264 OF 2023**

Dayanand Malakari Shivsharan

... Appellant/Applicant

Vs.

The State of Maharashtra & Anr.

... Respondents

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Adv. Shivani Gautam a/w Adv. Tanoj Joshi, a/w Adv. Nitin Bhoskar i/by
Adv. Pradeep Kumar Pardeshi, for the Appellant/Applicant.

Mrs. M. R. Tidke, APP for the Respondent/State.

Adv. Vikrant Phatate, for the Respondent No. 2 appointed through legal aid.

CORAM : KISHORE C. SANT, J.

DATE : 2nd May, 2024

P.C.:-

1. Heard the parties. This Application is for suspension of sentence and for release of the Applicant on bail. The Applicant is held guilty for the offences punishable under Section 376 (2) (f), 376(2) (j) of the Indian Penal Code and under Sections 4, 5(1), 5(n) of the Protection of Children from Sexual Offences Act. He is sentenced to suffer rigorous imprisonment for fifteen years and to pay a fine of Rs. 15,000/-, in default to suffer R.I. for two years. He is also convicted under Sections 354-A of the Indian Penal Code and under Sections 8 and of the POCSO Act, and is directed to undergo 4 years rigorous imprisonment and to pay a fine of Rs.

5,000/-, in default to suffer R. I for one year.

2. The learned Advocate for the Applicant submits that the date of birth of the Victim is not proved properly. There is delay of more than 2 years from the alleged first incident and lodging the FIR. He further submits that from the cross of the Victim it is seen that there were 7 to 8 persons staying in one room of 10' x 12'. It is impossible under such circumstances to commit an Act of sexual assault. He further submits that since the date of FIR he is arrested on 4th May, 2019, by now he has completed more than 6 years in jail. He thus prays for suspension of sentence and release of the Applicant on bail. It is further submitted that the accused is suffering from H. I. V. and considering that aspect the applicant be released on bail. Though it is submitted that the accused suffering from H.I.V. the Jail Authority can very well take care of the accused.

3. The learned Advocate for the Respondent No. 2 and learned APP vehemently opposed the Application. They submitted that in this case the victim happens to be a niece of the accused. The Victim was required to stay with the Applicant as her father was a heavy drinker and it is for that reason the mother had sent victim for education in one boarding school. There allegations of repeatedly doing the act by the Accused No. 1. The Victim had immediately reported the incident to Accused No. 2 that is wife of the present Applicant. However she also did not respond and kept quite. The Accused No. 2 had even threatened the Victim and her sister. They

submit that the Victim was minor when the first incident took place, they pray for rejection of the Application.

4. After hearing the parties this Court has seen the evidence to see whether prima facie case is made out. From the evidence of the Victim it is seen that she has deposed about the incident. In the cross examination her evidence is not shattered the medical evidence is also supporting the prosecution. Considering the evidence this Court is of the opinion that no case is made out at this stage to grant this Application for bail.

5. This Court is thus not inclined to allow the Application, the Application therefore deserves to be rejected and the same is hereby rejected.

6. Interim Application stands disposed of.

(KISHORE C. SANT, J.)