

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

**INTERIM APPLICATION NO. 2992 OF 2023
IN
CRIMINAL APPEAL NO. 961 OF 2021**

Nayaku @ Deva Maruti Dagade ... Applicant
Versus
The State of Maharashtra And Anr. ...Respondents

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Mr. Aniket Vagal a/w Mr. Divesh Mehani a/w Ms. Savvy Kolhekar,
Advocate for the Applicant.

Ms. Devyani Kulkarni for Respondent No.2.

Mr. Arfan Sait, APP for the Respondent No.1– State.

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**CORAM : PRAKASH D. NAIK, J.
DATE : 10th JANUARY, 2024.**

P.C.:

1. This is an application for suspension of sentence and grant of bail. The previous application was rejected by this Court vide order dated 4th March 2022. However, the hearing of appeal was expedited.

2. The applicant has been convicted vide Judgment and order dated 21st September 2021 passed by the Special Judge, Mangaon, Dist. Raigad, in Special Case No.73 of 2020 for offence punishable under Section 5(1)(n) punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act')

and sentenced to suffer imprisonment for 10 years and to pay fine of Rs.1,00,000/-. He is also convicted for offence under Section 366-A and 323 of Indian Penal Code (for short “IPC”) and sentenced to suffer imprisonment for 8 years and 6 months respectively.

3. The prosecution case is that the accused told the victim that her husband is keeping relations with other women. Information was received that the husband of victim girl is in company of other women at Birwadi. Accused informed the victim that her husband is at Birwadi and told her to accompany him. The victim sat on his motorcycle. They proceeded towards Birwadi. They could not trace husband of victim. The accused told father-in-law of victim to follow them. The accused drove motorcycle with speed. Victim's father-in-law remained behind. The accused did not answer calls of victims father-in-law. The accused took the victim to village. She was subjected to sexual assault.

4. Learned Advocate for the applicant submitted that although the hearing of appeal was expedited, the appeal could not be heard. The applicant is in custody for a period of about six years. The appeal may not be heard immediately.

5. Learned A.P.P. submitted that previous application was rejected by this Court. There is sufficient evidence against the

applicant. The appeal can be heard expeditiously.

6. Learned Advocate for the Respondent No.2/Complainant submitted that the victim was subjected to sexual assault twice. There is sufficient evidence against the applicant.

7. While rejecting the previous application for suspension of sentence, this Court had noted that the applicant is in custody for 4 years. The hearing of appeal was expedited. Thereafter the period of about two years have passed but the appeal could not be heard. Several other appeals wherein accused are in custody are pending in this Court. This appeal cannot be heard out of turn. The applicant is in custody for six years. Considering these circumstances, the prayer for suspension of sentence and grant of bail can be granted.

ORDER

- i. Interim Application No.2992 of 2023 is allowed;
- ii. During pendency of Criminal Appeal No.961 of 2021, the substantive sentence of imprisonment imposed vide Judgment and order dated 21st September 2021 passed by the Special Judge, Mangaon, Dist. Raigad, in Special Case No.73 of 2020 is suspended and the applicant is directed to be released on bail on executing PR. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

- iii.** The applicant shall attend the trial Court once in three months between 11.00 a.m. to 1.00 till further order.
- iv.** The applicant shall stay out of jurisdiction of Taluka Purandar till final disposal of Appeal.
- v.** The applicant shall furnish the details of his place of residence after he is released on bail to the concerned Police Station.
- vi.** Interim Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)