

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

**INTERIM APPLICATION NO.3595 OF 2023
IN
CRIMINAL APPEAL NO.1214 OF 2023**

Ashpak Salim Bagwan ..Applicant/Appellant
Versus
The State of Maharashtra & Anr. ..Respondents

Mr. Shailesh Kharat, for the Applicant/Appellant.
Mrs. M. R. Tidke, APP for the Respondent/State.
Mr. V. V. Purwant, for the Respondent No.2.

CORAM : KISHORE C. SANT, J.

DATE : 6th FEBRUARY, 2024

PC.

1. This Application is filed seeking suspension of sentence awarded by learned Additional Sessions Judge, Pune in Special SC POCSO No.158 of 2018 dated 28.12.2021. By the impugned judgment, the Applicant/Appellant is held guilty for the offence punishable under Sections 376(2)(n)(i)(j), 354-D, 506(1) of IPC and Section 3 punishable under Section 4 and Section 7 punishable under Section 8 of POCSO Act. The punishment awarded is ten years rigorous imprisonment and to pay fine of Rs.50,000/-, in default to undergo further simple imprisonment for one year for the offence under Section 376(2)(n)(i)(j) of IPC. The sentence of three years simple imprisonment and fine of Rs.5000/-, in default to

suffer simple imprisonment for two months for the offence under Section 354-D of IPC. Applicant/Appellant is sentenced to suffer simple imprisonment for one year and fine of Rs.3000/-, in default simple imprisonment for one month for the offence under Section 506(1) of IPC. For the offence punishable under Section 4 of POCSO Act, Applicant/Appellant is directed to suffer rigorous imprisonment for ten years and to pay fine of Rs.10,000/-, in default to suffer simple imprisonment for four months. For the offence punishable under Section 8 of POCSO Act, Applicant/Appellant is directed to suffer simple imprisonment for three years and to pay fine of Rs.10,000/-, in default to suffer simple imprisonment for four months.

2. The main ground on which the sentence is sought to be suspended is that the Accused is arrested on 13.01.2018. He has completed six years out of ten years imprisonment. Learned advocate for the Applicant/Appellant relies on the judgment in the matter of **Saudan Singh Vs. State of Uttar Pradesh**¹ and the 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**. In the judgment of *Saudan Singh (cited supra)*, the Hon'ble Apex Court has considered the board parameter of 50% period of incarceration of the convict in the custody. In paragraph 7, it has laid down as below :-

¹ 2021 SCC OnLine SC 3259.

“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.”

Considering above aspect, this Court in Interim Application No.1530 of 2023 had released the convict on bail. The Applicant/Appellant thus prays for suspension of sentence.

3. Learned advocate for the Respondent No.2 and learned APP vehemently oppose the Application, as it is an offence under POCSO Act and Accused is held guilty. If Applicant/Appellant is released on bail that may affect the society and the victim.

4. Considering the above and since the Applicant/Appellant has suffered more than six years imprisonment out of ten years and also looking to the merits of the matter, this Court finds that the Application needs to be positively considered. Hence the following order :-

- i) The Application stands allowed.
- ii) The sentence awarded by the learned Additional Sessions Judge, Pune in Special SC POCSO No.158 of 2018 dated 28.12.2021 for the offence punishable under Sections 376(2)(n)(i)(j), 354-D, 506(1) of IPC and Section 3 punishable under Section 4 and Section 7 punishable under Section 8 of POCSO Act stands suspended.

- iii) Applicant/Appellant be released on bail on furnishing PR bond and solvent surety in the sum of Rs.25,000/-.
 - iv) Applicant/Appellant shall report to the concerned Police Station on first Sunday of every month between 10:00 a.m. to 12:00 noon.
 - v) Applicant/Appellant shall keep informed about his address and other contact details to the concerned Police Station.
 - vi) Applicant/Applicant shall stay 100 km. away from the place where the victim is presently residing.
5. With this, the Application stands disposed of.

[KISHORE C. SANT, J.]