

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.4323 OF 2023
IN
CRIMINAL APPEAL NO.236 OF 2024

Mr. Mohsin Mohammad Shaikh : Applicant
Vs.
The State of Maharashtra & Anr. : Respondents

Adv. Sana Raees Khan for the Applicant.
Mrs. M. R. Tidke, APP for the State.
Adv. Rahul Patil a/w Heena Suvarankar, for the Respondent No.2.

CORAM : KISHORE C. SANT, J.

DATE : 4TH APRIL, 2024

PC. :

1. Heard learned Advocate for the Applicant, learned APP & Learned Advocate for the Respondent No.2.
2. This Application is for suspension of sentence awarded by the Learned Special Judge, Pune under POCSO Act dated 5th August, 2023 in Special POCSO Case No.527 of 2018. The Applicant is held guilty for the offence punishable under Section 376(2)(i) of the Indian Penal Code and Section 6 read with Section 5(l)(m) and 10 read with Section 9(l)(m) of the POCSO Act, 2012.

3. Learned Advocate for the Applicant vehemently argued that in this case the Applicant has already undergone more than 5 years and 6 months in custody out of 10 years of sentence awarded by the Learned Special Judge. She has taken this Court through the evidence to *prima facie* show that the case is not made out for conviction. She also submits that the medical condition of the father of the Applicant is not well by producing Medical Certificate dated 20th March, 2024 issued by the Doctor. That the father is suffering from Ischemic Heart Disease with COPD. She submits that the Applicant is falsely prosecuted because of the previous enmity between the father of the victim and the Applicant. The Applicant is the only son. She submits that the case is made out to to suspend the sentence. She relied on the order in the case of ***Joy Rajendran Vs. The State of Maharashtra*** passed by the Apex Court in Special Leave Petition (Criminal) Diary No.34960 of 2022. She submits that in that case there were 8 victims and till the Apex Court allowed the Application for suspension of sentence as the Applicant there had undergone sentenced of 8 years out of 10 years.

4. Learned APP submits that when the offence took place the accused was a married person. Whereas the victim was only of 6 years when the incident took place. He submits that the doctor has clearly

supported the case of the prosecution i.e. PW-3 Dr. Pallavi Bhagat. That the girl was forcibly kissed on the genital area & lips because of that there was perihymenal redness. She prays for rejection of the Application.

5. Leaned Advocate for the Respondent No.2 also opposes the Application stating that there is a clear evidence on the basis of which the Applicant is convicted.

6. This Court has gone through the evidence to *prima facie* asses as to whether the case is made out for suspension of sentence. The Court has also considered the order passed by the Apex Court in the case of ***Atul @ Ashutosh Vs. State of Madhya Pradesh*** passed in Criminal Appeal No.579 of 2024 and the case of Joy Rajendran where bail was granted. Considering that the Appeal may not reach in near future till completion of the sentence.

7. This Court has also considered the case of ***Sonadhar Vs. The State of Chhattisgarh*** reported in 2022 LiveLaw (SC) 788. In the case of Sonadhar it was the offence under Section 376 of the Indian Penal Code and no POCSO charges were against the said Accused. In the case of Joy Rejendran out of 10 years sentence the Applicant had undergone 8 years. In the case of Atul @ Ashutosh sentence was 5 years and out of that sentence the Accused had undergone half of the sentence. Though thus

observed that the Appeal was not likely to reach before completion of sentence and sentence was suspended.

8. In the present case, this Court finds that the sentence is 10 years out of which the Applicant has undergone 5 years & 6 months. This Court has seen the evidence of the victim and the doctor. This Court has also considered that the Applicant was a married person at the time of the incident and the victim was hardly of 6 years of age.

9. Considering the above, this Court is not convinced that this is a case to allow the Application and to suspend the sentence by releasing the Applicant grant on bail.

10. The Application is therefore rejected.

11. The Applicant is at liberty to move this Court for fixing the Appeal at an early date, if the Appeal is not taken up within reasonable time.

12. With this the Application stands disposed of.

(KISHORE C. SANT, J.)