

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.4634 OF 2023

IN

CRIMINAL APPEAL NO. 102 OF 2022

Irshad Muktar Shaikh

...Applicant

Versus

The State of Maharashtra and Anr.

...Respondents

....

Ms. Akshata B. Desai a/w Mr.Akshay H. Bankapur, Advocate for the Applicant.

Mr.V. A. Kulkarni, APP for the Respondent – State.

Mr. Sushan Mhatre, Appointed Advocate for Respondent No.2.

PSI Bhagwan, Colaba Police Station, Mumbai is present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 8th APRIL 2024

P.C.:-

1. Leave to amend to annex the order dated 6th May 2022 to this application. Amendment may be carried out immediately.

2. This is an application for suspension of sentence and grant of bail during the pendency of Criminal Appeal No. 102 of 2022 challenging the judgment and order dated 18th January 2020 passed by learned Special Judge under the POCSO Act for Greater Bombay in POCSO Case No. 316 of

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Corrected version of order dt.08.04.2024 pursuant to speaking to minutes of order dt.23.04.2024.

2015.

3. The previous application for suspension of sentence viz. Interim Application No.2681 of 2021 preferred by Applicant was rejected by this Court vide order dated 6th May 2022. However, hearing of appeal was expedited and it was directed that, in the event, the appeal is not heard within a period of one year, the applicant is at liberty to prefer fresh application for bail.

4. The present application was listed before Co-ordinate Bench and vide order dated 3rd January 2024, it is directed that, the application be placed before the appropriate Bench. The Registry has sought direction from the Hon'ble Chief Justice and it has been directed that the application be listed before me.

5. The applicant is convicted for offences under Section 376(d), 354, 363, 506 read with 34 of the Indian Penal Code, 1860 and Sections 4 and 8 of the Protection of Children From Sexual Offences Act, 2012. The applicant is sentenced to suffer imprisonment of 20 years for the conviction under Section 376(d) of IPC and imprisonment of 10 years for the conviction under Section 4 of POCSO Act. Both the sentences were directed to run concurrently.

6. Learned Advocate for the Applicant submitted that, the applicant is in
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custody from 22nd March 2015. He has undergone the sentence for 10 years and 6 months. At the time of incident, the applicant was aged around 20 years. The hearing of the appeal was expedited by this Court and liberty was granted to the applicant to renew the prayer for bail, in the event, the appeal is not heard within a period of one year. The appeal could not be heard. There are no chances of appeal being heard immediately.

7. Reliance is placed on the decisions of the Apex Court in the case of **Suleman Vs. The State of Uttar Pradesh delivered in Criminal Appeal No. 491 of 2022 arising out of SLP (Cri.) No. 1451 of 2022 on 25th March 2022** and in the case of **Saudan Singh Vs. The State of Uttar Pradesh delivered in Criminal Appeal No. 308 of 2022 and other connected matter arising out of SLP (Cri.) No. 4633 of 2021 decided on 25th February 2022.**

8. Learned APP submitted that, the offence is of serious nature. The victim was minor. The previous application for suspension of sentence was rejected by this Court. Hearing of appeal may be expedited.

9. Learned Advocate for Respondent No.2 submitted that, there is sufficient evidence against the applicant. He has been convicted and sentenced to suffer imprisonment for 20 years. The appeal may be directed to be heard expeditiously.

10. The Certificate of Imprisonment issued by Kolhapur Central Prison,

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Corrected version of order dt.08.04.2024 pursuant to speaking to minutes of order dt.23.04.2024.

Kalamba, Kolhapur was produced by Advocate for Applicant which indicate that the applicant is undergoing imprisonment at Kolhapur Central Prison. The actual imprisonment undergone by the applicant is around 9 years till date and the total period of imprisonment undergone by including remission till 30th November 2023 was Ten years One month Three days.

11. Vide order dated 6th May 2022 it was directed that, in the event, the appeal is not heard within a period of one year, the applicant was granted liberty to prefer fresh application for bail. Thereafter, period of about 1 year and 11 months have lapsed and the appeal could not be heard. The applicant was aged around 20 years at the time of incident.

12. In the case of **Saudan Singh Vs. State of U.P.** (supra) the Hon'ble Supreme Court had considered the issue of pendency of appeal challenging the conviction and factum of the convicts in Jail pending appeals. The Apex Court issued directions to the Allahabad High Court with regard to hearing of the Bail Applications by the High Court and to prepare a list of the cases where the accused have been in custody and served out 14 years of sentence and the appeal has not been heard. The Court also directed to prepare category of cases where the person has served out more than 10 years of sentence and directed that, bail can be granted unless there are any extenuating circumstances against such person. The Apex Court heard the appeals seeking bail and passed separate orders in the Appeals granting

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bail. The Hon'ble Supreme Court granted bail in appeals which could not be heard and appellants were in custody for 10 years, 11 years, 12 years, 13 years 14 years and 17 years. The Apex Court observed that, there is apparently a misconception that if the Court is ready to hear the appeal, the bail application should not be considered in all circumstances. This would normally be true as counsels can't get away with unpreparedness to argue the appeal and and claim bail. The caveat would be in cases where a person has already served out 14 years of actual sentence as in that case, a different norm comes into place requiring the case to be considered thoroughly under the Uttar Pradesh Prisoners Release on Probation Rules, 1938. Thus to deny even bail to such a person for the fault of the counsel who does not argue, the accused having nothing to gain, would be really a parity of justice.

13. In the case of **Suleman Vs. State of U.P.** (supra), the Hon'ble Supreme Court has relied upon the order passed in the case of **Saudan Singh Vs. The State of U.P.** (supra) vide order dated 25th March 2022 it was observed that, the issue before the Court is whether in criminal appeal of the year 2012 pending before the High Court of Allahabad where the appeals of the 1980s are being heard and the appellant having undergone 12 years of actual incarceration is still to be denied bail. It was observed that bail should have been for the asking and the order is completely

unsustainable. The appellant was granted bail.

14. Considering the aforesaid circumstances, sentence of imprisonment can be suspended and bail can be granted to the applicant during the pendency of Criminal Appeal challenging the Judgment of conviction.

ORDER

- (i) Interim Application No. 4634 of 2023 is allowed;
- (ii) The substantive sentence of imprisonment imposed vide judgment and order dated 18th January 2020 passed by learned Special Judge under the POCSO Act for Greater Bombay in POCSO Case No. 316 of 2015 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) Applicant shall report concerned police station once in a month on first Saturday of the month between 11:00 a.m. to 01:00 p.m. till further orders.
- (iv) Interim Application stands disposed off.

(PRAKASH D. NAIK, J.)