

Shailaja

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

INTERIM APPLICATION NO.2650 OF 2024
[For Bail and Suspension of Sentence]
IN
CRIMINAL APPEAL NO.718 OF 2022

Narayan Maina Yadav @ Samir Asif Khan	]	Applicant
Vs.		
The State of Maharashtra and another	]	Respondents

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Ms. Shradha Sawant, for Applicant.

Ms. Kranti T. Hiwrale, A.P.P, for Respondent – State.

**CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, J.J.**

DATE : 2nd August, 2024.

P.C.:

1. Heard learned Counsel for the parties.
2. By this Interim Application, the applicant seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of his aforesaid appeal.

3. The applicant vide judgment and order dated 11th April, 2019 passed by the learned Special Judge (POCSO), Greater Bombay in POCSO Special Case No.364 of 2016 has been convicted for the offence punishable under section 4 of the Protection of Children from Sexual Offences Act, 2012 (for short “POCSO Act”) and is sentenced to suffer imprisonment for life and to pay a fine of Rs.6,000/-, in default, to suffer simple imprisonment for thirty days. For the offence punishable under section 506 (2) of the Indian Penal Code (for short “I.P.C”), the applicant has been sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.500/-, in default, to suffer simple imprisonment for seven days. In view of the punishment awarded under the POCSO Act, no separate punishment was awarded under Section 376 (2) of the I.P.C and under section 8 of the POCSO Act.

4. Perused the papers, and in particular, the evidence of P.W.1 and P.W.2 i.e the prosecutrix. The evidence of P.W.1 shows that she was aged about twelve years when the applicant started sexually assaulting her, which sexual assault continued for about four years. P.W.1 has further stated that she had witnessed on one occasion, P.W.2 and the applicant lying in a naked condition. There is no

cross-examination of P.W.1 on certain material aspects i.e with respect to the sexual assault.

5. A perusal of the evidence of P.W.2 – second prosecutrix also shows that she was aged about ten years at the relevant time. She, too, has stated how the applicant sexually assaulted her. She has given details of sexual assault.

6. In fact, the cross-examination of P.W.2 itself is damaging to the applicant, considering some of the questions which have been asked in the cross-examination to P.W.2, in particular, in paragraphs 13 and 14. The applicant is the step father of the prosecutrix i.e P.W.1 and P.W.2.

7. Considering the seriousness of the crime and the manner in which, the young girls, who were aged about ten and twelve years at the relevant time were sexually assaulted by the applicant and having regard to the evidence on record, we do not think that this is a fit case to enlarge the applicant on bail.

8. The application is rejected, however, the hearing of the appeal is expedited. As soon as the paper-book is ready, the appeal be added at its appropriate place on the final hearing board.

9. Liberty to mention for fixing date of hearing after the paper-book is ready.

10. Since the aforesaid application has been filed by the applicant through the High Court Legal Services Committee, Registry to communicate the aforesaid order passed today to the applicant, who is presently lodged in jail.

11. Application is disposed of.

[PRITHVIRAJ K. CHAVAN, J.]

[REVATI MOHITE DERE, J.]