



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (APPA) NO. 111 OF 2024

IN

CRIMINAL APPEAL NO. 35 OF 2023

Roshan S/o. Rajesh Pawar

Vs.

State of Maharashtra and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mrs. Meena Hiwase, Advocate for applicant.
Shri Neeraj Jawade, APP for non-applicant no. 1/State.
Ms. F. N. Haidari, Advocate (appointed) for non-applicant no. 2.

CORAM :- M. W. CHANDWANI, J.

DATED :- 05.02.2024

Heard.

2. By the present application, the applicant is seeking suspension of the substantive sentence and prayed for releasing him on bail pending the appeal. The applicant has been convicted for the offence punishable under Section 376(2)(i) and Section 506(2) of the Indian Penal Code as well as under Sections 4 to 6 of the Protection of Children from Sexual Offences (POCSO) Act, 2012.

3. The applicant is sentenced to suffer rigorous imprisonment for 10 years for the offence punishable under Section 6 of the POCSO Act and to pay a fine of ₹5,000/-. The applicant was further directed to suffer

rigorous imprisonment of 3 years for the offence punishable under Section 506(2) of the IPC and to pay fine of ₹2,000/-. No separate sentence was awarded as far as Section 376 of the IPC and Section 4 of the POCSO Act.

4. At the outset, it is to be mentioned here that the present application for suspension of sentence in the appeal is not made on merit. Rather, the Court has already shown its disinclination to suspend the sentence, and accordingly earlier application came to be withdrawn. However, the present application is made solely on the ground that the applicant is suffering from oral cancer i.e. Buccal Mucosa and the disease is at Stage-IV, which is a life threatening disease. The applicant is unable to even eat properly and consequently even chemotherapy cannot be given during the treatment in jail. The applicant has filed the documents to support his contention.

5. Perusal of the discharge card of the Regional Referral Services Hospital, Amravati, where he was admitted for the treatment of oral cancer called Buccal Mucosa shows that the said disease is at advanced stage i.e. Stage-IV. The learned APP for the State though oppose the application but, has confirmed about the disease and its stage. Considering the gravity of the disease and the fact that it is in advanced stage, which in most of the cases is proved to be fatal. A case is made out

for suspension of substantive sentence and grant of bail, purely on medical grounds. Hence, I proceed to pass the following order:-

- i) The application is allowed.
- ii) During the pendency of the appeal, the substantive sentence awarded to the applicant vide judgment and order dated 28.11.2022 passed by the learned Additional Sessions Judge, Amravati in Spl. POCSO Case No. 105/2017 shall remain suspended.
- iii) The applicant be released on bail on he executing a PR bond of ₹15,000/- (Rs. Fifteen Thousand) with one solvent surety in the like amount.
- iv) The applicant shall appear before this Court at the time of final hearing of the appeal.
- v) The fees of learned counsel appointed to represent the non-applicant no. 2 shall quantify as per rules.

The Registry is directed to process the appeal as per rules.

(M. W. CHANDWANI, J.)