

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

**Interim Application No. 4614 of 2023
In
Criminal Appeal No.220 of 2024**

Akash Subhash Pawar

Age: 22 years, Occ: Nil,

R/a: Ghatnandre, Tal. Kavathe,

Mahankal, Dist. Sangli,

(Presently at Kolhapur jail/ prison)

... Applicant

Versus

1. The State of Maharashtra

(Through Police Inspector,

Kokrud Police Station,

Dist-Sangli, Maharashtra)

2. XYZ

(Through Kokrud Police Station,

Age: 8 yrs.)

... Respondents

Mr Sachidanand D Tandel, for the applicant.

Ms MR Tidke, APP, for respondent No.1/ State.

Mr Abhishek G Kulkarni, for respondent No.2 (through Legal Aid).

Coram: R.N. Laddha, J.

Date: 22 April 2025

P.C.:

The applicant faced trial in Special Case POCSO No.34 of 2020 before the Court of Special Judge (POCSO), Islampur, Sangli, for offences punishable under Sections 376(2)(n) and 376-AB of the Indian Penal Code ('IPC') and Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act').

2. The offence in question stems from the allegation that the applicant sexually assaulted the victim, a minor aged 5 years at the time of the incident. At trial, eight witnesses were examined by the prosecution and two by the defence. By the judgment and order dated 16 August 2023, the trial Court convicted the applicant and sentenced him to suffer rigorous imprisonment for twenty years and pay a fine of Rs.3,000/- (with default stipulations) for the offence punishable under Section 6 of the POCSO Act. As the applicant was sentenced under Section 6 of the POCSO Act, no separate sentence was imposed upon him for other offences.

3. Dissatisfied, the applicant preferred an appeal before this Court and, by the present application, seeks suspension of the sentence and release on bail.

4. Mr Sachidanand Tandel, the learned Counsel appearing

on behalf of the applicant, submits that there are significant gaps in the prosecution's evidence, and the testimonies of the prosecution witnesses lack credibility and fail to inspire confidence. The main thrust of the arguments is that there was a significant delay in lodging the FIR, a fact overlooked by the trial Court, and that the sonography report was never submitted to the Court. Further, the key allegations do not align with the medical evidence. The learned Counsel also submits that the applicant has been languishing in jail for four years and seven months out of the twenty-year sentence and is ready to adhere to any conditions imposed by the Court.

5. Ms Manisha Tidke, the learned Additional Public Prosecutor representing respondent No.1/ State, and Mr Abhishek Kulkarni, the learned Counsel appearing for respondent No.2, opposing the applicant's request, emphasising the seriousness of the charge on which the applicant has been convicted, argues that the victim was only five years old when the offence occurred. The evidence on record strongly supports the prosecution's case and does not warrant the grant of bail. They further assert that there was no enmity or any other reason to implicate the applicant falsely, and his guilt was proved beyond reasonable doubt.

6. This Court has given anxious consideration to the rival

contentions and perused the records.

7. In *K.C. Sareen v. CBI, (2001) 6 SCC 584*, the Hon'ble Supreme Court held as follows:

“11. The legal position, therefore, is this: though the power to suspend an order of conviction, apart from the order of sentence, is not alien to Section 389(1) of the Code, its exercise should be limited to very exceptional cases. Merely because the convicted person files an appeal in challenge of the conviction the court should not suspend the operation of the order of conviction. The court has a duty to look at all aspects including the ramifications of keeping such conviction in abeyance.”

8. In the present case, it is undisputed that the victim was around five years old at the time of the incident. The testimony of the victim is consistent with her statement. She deposed that she and her friends used to go to the accused's house to play. At the time of the incident, the applicant removed the victim's trousers and rubbed her vagina. He committed the same act before the Ganpati festival and thereafter. Due to which there was stomach ache and itching in her vagina. The victim was taken to the hospital, where the doctor examined her. The evidence of the doctor, PW-4, shows that the victim's mother narrated the history of the incident to him, wherein she stated that the victim was sexually assaulted by her neighbour, the applicant. She also said that she witnessed the applicant

inserting the finger into the victim's vagina. On clinical examination, PW-4 found redness plus over labia minora. The mother of the victim deposed that on 9 September 2020, the victim was playing in the lane and she was cooking. After cooking, she went to search for her daughter as the victim did not come home. At that time, she went to the house of the accused, where she saw that the accused had slept with the victim and committed aggravated penetrative assault, and on seeing her, the applicant fled away.

9. In view of the aforementioned facts and evidence, it is evident that the prosecution has brought forth grave and substantial material implicating the applicant in the alleged offence. The evidence on record, particularly the consistent testimony of the minor victim, the corroborating medical findings, and the eye-witness account provided by the victim's mother, does not justify the suspension of the sentence and the applicant's release on bail. All the contentions raised by the learned Counsel for the applicant will have to be tested at the final hearing stage. Accordingly, this Court finds no merit in the present application and the same stands rejected. The appeal is expedited.

(R. N. Laddha, J.)