

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

Interim Application No. 547 of 2024

in

Criminal Appeal No. 315 of 2024

Mohammad Sajid Abdul Rehman Shaikh

Age 46 years, Occ. Spot Boy,

R/at. R. No.132, Near Nagina

Masjid, Near Muslim Pandal,

Tulsiwadi, Tardeo, Mumbai.

... Applicant

versus

1. The State of Maharashtra

At the instance of Tardeo

Police Station in FIR No.299 of 2018.

2. XYZ

(At the instance of Tardeo Police

Station in FIR No.299 of 2018)

... Respondents

Mr V. S. Tiwari a/w Ms Priya Muthupandi a/w Ms Priti Tiwari
a/w Mr Siddhesh Tiwari, for the applicant / appellant.

Ms Sangita E Phad, APP, for respondent No.1 / State.

Mr Veerdhawal Deshmukh, Appointed Advocate for
respondent No.2.

Coram: R.N. Laddha, J.

Date: 10 January 2025

P.C.:

. By the present application, the applicant who has filed an

appeal calling in question conviction and sentence imposed upon him by the Special Judge under Protection of Children from Sexual Offences Act, 2012 (POCSO Act) at Mumbai, in POCSO Special Case No.157 of 2019, seeks suspension of sentence and prays for release on bail, pending the adjudication of his appeal.

2. Mr V. S. Tiwari, the learned Counsel for the applicant, Ms Sangita Phad, the learned Additional Public Prosecutor representing the respondent No.1 / State and Mr Veerdhawal Deshmukh, the learned Counsel for respondent No.2 have taken me through the appeal memo, appeal papers and adverted to the merits of their rival contentions.

3. The learned counsel for the applicant points out the alleged deficiencies in the prosecution's case. They submit that the testimonies of the prosecution witnesses lack credibility and fail to inspire confidence. There was a significant delay in recording the statements of the witnesses, with the Principal of the School statement being recorded after about two months and the victim's mother statement after 37 days. The victim turned hostile regarding the incident involving her relative, accused No.1 Shahrukh, casting doubt on the incident. The victim did not testify in the Court that the accused committed

anal intercourse. The applicant has been in custody for over six years and assures that he will not enter the jurisdiction of the concerned police station and/or contact the victim or her family members.

4. The learned Additional Public Prosecutor representing respondent No.1 / State and the learned Counsel for respondent No.2 opposing the prayer for bail, refers the seriousness of the charge on which the applicant has been convicted and argues that the evidence on record strongly supports the prosecution's case and does not warrant the grant of bail.

5. This Court has considered the arguments advanced at the Bar. While acknowledging the arguments presented by the learned APP and the learned counsel for respondent No.2 regarding the gravity of the offence and the current post conviction stage, it is essential to recognise that the applicant has already served six years of total ten years sentence. The significant period of incarceration should be taken into account. The appeal was filed in 2024, indicating that the judicial process is ongoing. Given the current stage of the appeal, it is important to ensure that the applicant's rights are not duly compromised. If bail is denied at this juncture, there

is a high likelihood that the applicant will complete the majority, if not the entirety of the sentence before the appeal is heard and decided. Hence, the following order:

ORDER

- (i) The sentence imposed on the applicant vide judgment and order dated 15 September 2023 passed by the learned Special Judge under POCSO Act, Mumbai in POCSO Special Case No.157 of 2019 is suspended during the pendency of the appeal.
- (ii) The applicant shall be released on bail on executing a P.R. Bond of Rs.25,000/- with one or more sureties in the like amount.
- (iii) The applicant shall not enter the jurisdiction of the concerned police station and shall not make any contact, directly or indirectly, with the victim or her family members.
- (iv) The applicant shall keep the investigating officer informed and updated about his contact number and address.

(R.N. Laddha, J.)