

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

Interim Application No.576 of 2024

in

Criminal Appeal No.126 of 2024

Kuldeep @ Krishna Amrutlal Joshi

Aged 23 years, Occ. Nil,

R/at.: Kalyanpar, Swami Narayan

Mandir, Tal. Rapar, Dist.: Bhuj, Gujarat.

... Applicant

versus

1. The State of Maharashtra

(Through Ghatkopar Police Station)

2. XYZ

Through Ghatkopar Police Station

FIR No.554 of 2020

... Respondents

Mr Ayush Pasbola, a/w. Mr Sudhir Bhardwaj, for the applicant.

Ms Manisha R Tidke, APP, for respondent No.1/ State.

Mr Mohan Rawat, for respondent No.2.

Coram: R.N. Laddha, J.

Date: 17 March 2025

P.C.:

Heard Mr Ayush Pasbola, the learned Counsel appearing for the applicant, Ms Manisha Tidke, the learned Additional Public Prosecutor representing respondent No.1/ State, and Mr Mohan Rawat, the learned Counsel appearing on behalf of respondent No.2.

2. The applicant faced trial in Special Case No.897 of 2020 before the Special Court for Protection of Children from Sexual Offences Act, 2012, Mumbai, for the offences punishable under Sections 363, 376(2)(i)(n), 354(d)(1)(i)(ii), 417, 328, and 506 of the Indian Penal Code ('IPC') and Sections 4, 8, and 12 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO'). By a judgment and order dated 8 January 2024, the applicant stood convicted for the offences punishable under Sections 363, 376(2)(i), 376(2)(n), 354(d), 417, 328 and 506 of the IPC and Sections 4, 8 and 12 of the POCSO Act. The applicant was sentenced to suffer: (i) rigorous imprisonment for five years and a fine of Rs.3,000/- (with default stipulations) for the offence punishable under Section 363 IPC, (ii) rigorous imprisonment for one year for the offence punishable under Section 417 IPC, (iii) rigorous imprisonment for five years and a fine of Rs.3,000/- (with default stipulations) for the offence punishable under Section 328 IPC, (iv) rigorous imprisonment for two years for the offence punishable under Section 506 IPC, and (v) rigorous imprisonment for ten years and a fine of Rs.3,000/- (with default stipulations) for the offence punishable under Section 4 of the POCSO Act. These sentences were directed to run concurrently.

3. Aggrieved, the applicant preferred an appeal before this

Court and, by the present application, seeks suspension of the sentence and release on bail.

4. The learned Counsel appearing on behalf of the applicant, highlighting the alleged shortcomings in the prosecution's case, contends that the testimony of the prosecution witnesses lacks credibility and fails to inspire confidence. He submits that the learned trial Court failed to consider the significant delay in lodging the FIR, as the alleged incident occurred in July 2018 and was reported only in July 2020. He further points out that the victim was 16 years old, and the applicant was 20 years old at the relevant time. The learned Counsel further submits that the alleged indecent photographs of the victim were not found in the applicant's mobile phone; thus, the question of threatening the victim does not arise. The applicant has been languishing in jail since 28 August 2020 and has completed almost half the sentence imposed on him. The learned Counsel also submits that the applicant is ready to cooperate fully with the appeal proceedings and comply with any conditions imposed by the Court, including refraining from entering the jurisdiction of the concerned police station where the victim resides.

5. The learned Additional Public Prosecution representing respondent No.1/ State and the learned Counsel appearing on

behalf of respondent No.2/ the victim, opposing the applicant's request, jointly refer to the seriousness of the charge on which the applicant has been convicted and argued that the evidence on record strongly supports the prosecution's case and does not warrant the grant of bail.

6. This Court has given anxious consideration to the rival contentions and perused the records.

7. It is a well-settled position in law that the appellate Court can leniently consider a convict's request for suspension of the sentence in cases where the term of the sentence is fixed except in exceptional circumstances or where restrictions under any statute apply. If the sentence imposed cannot be suspended, the appellate Court must endeavour to adjudicate the appeal on merits, especially in cases where there is a plea for expeditious resolution. Failing to do so could jeopardise the appellant's statutory rights due to the passage of time. In situations where the appellate Court recognises that practical circumstances may hinder the prompt resolution of the appeal, it becomes essential for the Court to exercise heightened diligence in deliberating on sentence suspension. This ensures that the appeal process remains viable, meaningful, and effective. Additionally, when granting bail, the appellate Court has the discretion to impose certain conditions. A profitable reference in this regard can be

made to the decision in ***Bhagwan Rama Shinde Gosai v. State of Gujarat***, (1999) 4 SCC 421.

8. The maximum sentence period imposed upon the applicant is ten years. The victim was 16 years old, and the applicant was 20 when the complaint was lodged. While this Court acknowledges the arguments presented by the learned APP and the learned Counsel for respondent No.2 regarding the seriousness of the offence and the current post-conviction stage of the proceedings, it is essential to recognise that the applicant has already served four years and six months out of the total sentence of ten years. The appeal has been filed in 2024 and is unlikely to be heard immediately due to the pendency of the older appeals. Moreover, there are no circumstances or any statutory prohibition that warrant the refusal of the relief of suspension of the sentence to the applicant. In these circumstances, a case is made out for suspension of the sentence and release on bail. Hence, the following order:

ORDER

(i) The sentence imposed upon the applicant vide judgment and order dated 8 January 2024 passed by the Special Court for Protection of Children from Sexual

Offences Act, 2012, Mumbai, in Special Case No.897 of 2020, stands suspended during the pendency of the appeal.

(ii) The applicant shall be released on bail upon executing a PR Bond of Rs.25,000/- and furnishing one or more sureties in the like amount.

(iii) The applicant shall refrain from entering the jurisdiction of the concerned Police Station where the victim resides.

(iv) The applicant shall not contact the victim or her family members in any manner.

(v) The applicant shall keep the investigating officer informed and updated about his residential and contact details.

9. The interim application stands disposed of accordingly.

(R.N. Laddha, J.)