

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

Interim Application No.882 of 2024

In

Criminal Appeal No.903 of 2022

Shekhar Ajit Sarkar

Age : 24 yrs, Occ: Service

Add: Vijay Nagar Zopadpaati,

Below Tata Power, near

railway line, Behind Kalpana

Store, Dharavi, Mumbai

(at present in Nashik Jail)

.... Applicant.

Versus

1. The State of Maharashtra

(at the instance of Dharavi

Police Station, Mumbai,

CR No.461/2017)

2. XYZ

(At the instance of Dharavi

Police Station in FIR No.

461 of 2017

... Respondents.

Mr VS Tiwari, Advocate a/w Ms Priti Tiwari, Ms Priya Muthupandi, Ms Seema Shukla for the applicnat/accused.

Ms MR Tidke, APP for respondent /State.

Ms Sheetal PAKhare for respondent No.2.

Coram: R.N. Laddha, J.

Date: 1 April 2025.

P.C.:

By this application, the applicant seeks suspension of sentence imposed upon him vide judgment and order dated 19 July 2022 passed by the Court of Special Judge under the Protection of Children from Sexual Offences Act, 2012, Mumbai, in POCSO Special Case No.66 of 2018, and his release on bail during the pendency of the appeal. The applicant was acquitted of the offences punishable under Section 377 of the Indian Penal Code ('IPC') and Section 12 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act') and convicted for the offences punishable under Sections 6 and 10 of the POCSO Act. He was sentenced as follows: (i) ten years rigorous imprisonment and a fine of Rs.5,000/-, with default stipulations, for the offence under Section 6 of the POCSO Act, and (ii) five years rigorous imprisonment and a fine of Rs.2,000/-, with default stipulations, for the offence under Section 10 of the POCSO Act. The sentences were directed to run concurrently.

2. Heard the learned Counsel for the parties.

3. Mr VS Tiwari, the learned Counsel appearing on behalf of the applicant, highlighting the alleged shortcomings in the prosecution case, contends that the testimonies of the

prosecution witnesses fail to inspire confidence and lack credibility. The investigating officer did not record the victim's statement, and the victim and her mother did not sign the statement under Section 164 of CrPC. Further, the medical evidence does not align with the key allegations. The learned Counsel submits that the applicant has been languishing in jail since 26 October 2017 and has served more than seven years and five months out of the ten-year sentence. The applicant is ready to comply with any condition imposed by this Court and cooperate with the appeal proceedings if released on bail.

4. Ms Manisha Tidke, the learned Additional Public Prosecutor representing respondent No.1/ State, and Ms Sheetal Pakhare, the learned Counsel appearing for respondent No.2/ victim, opposing the applicant's request, refer to the seriousness of the charge on which the applicant has been convicted. They jointly argue that the evidence on record, more particularly the testimony of the victim, strongly supports the prosecution's case and does not warrant the grant of bail.

5. 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 or revision on merits, especially in cases where there is a plea for expeditious resolution. Failing to do so could jeopardise the applicant'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.

6. In the present case, the maximum sentence imposed upon the applicant is ten years, and the alleged incident occurred in 2017. While this Court acknowledges the submissions advanced by the learned APP and the learned Counsel for respondent No.2 and the current post-conviction stage of the proceedings, this Court is conscious of the fact that the applicant has undergone more than seven years and five months of imprisonment out of the ten-year term. The appeal was filed in

2022 and is unlikely to be heard in the near future due to the pendency of the older appeals. Moreover, nothing is on record to suggest that exceptional circumstances exist to justify the refusal of the relief prayed for. In light of the above, this Court deems it fit to allow the present application in the following terms:

- (i) The sentence imposed upon the applicant, Shekhar Ajit Sarkar, vide judgment and order dated 19 July 2022 passed by the Court of Special Judge under the Protection of Children from Sexual Offences Act, 2012, Mumbai, in POCSO Special Case No.66 of 2018, stands suspended during the pendency of the appeal.
- (ii) The applicant, Shekhar Ajit Sarkar, 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, Shekhar Ajit Sarkar, shall refrain from entering the jurisdiction of the concerned police station where the victim resides.
- (iv) The applicant, Shekhar Ajit Sarkar, either himself or through any other person,

shall refrain from contacting the victim or her family members in any manner whatsoever.

(v) The applicant, Shekhar Ajit Sarkar, shall update and inform the investigating officer about his residential and contact details.

7. The interim application stands disposed of.

[R.N. Laddha, J.]