

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

Interim Application No. 1392 of 2024

In

Criminal Appeal No.558 of 2024

Devmuni @ Shinku Brijmohan Pande

Age: 30 years, Occ: Labour

Suman Nagar, Room No.97,

Near Sai temple, Chunabhatti,

Mumbai-400 071.

(at present is in Nashik Road prison)

... Applicant

versus

1. The State of Maharashtra

(through Chunabhatti Police Station)

2. XYZ

(Chunabhatti Police Station, Chembur)

... Respondents

Mr Abhijeet P Rane, for the applicant.

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

Ms Shradha K Nakadi i/by Rupesh K Bobade, for respondent No.2.

Coram: R.N.Laddha, J.

Date: 24 March 2025.

P.C.:

The applicant faced trial in POCSO Special Case No.597 of 2018 before the Special Court for Protection of Children from Sexual Offences Act, 2012, Mumbai, for the offences

punishable under Sections 363 and 376(2) of the Indian Penal Code ('IPC') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO'). By a judgment and order dated 24 March 2023, the trial Court acquitted the applicant of the offence punishable under Section 363 of the IPC and convicted him for the offences punishable under Section 376(2) of the IPC and Section 6 of the POCSO Act. In light of the applicant's conviction under Section 6 of the POCSO Act, the applicant was only sentenced to suffer rigorous imprisonment for ten years and pay a fine of Rs.5,000/- (with default stipulations).

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

3. Mr Abhijeet Rane, the learned Counsel appearing on behalf of the applicant, highlighting the alleged deficiencies in the prosecution case, contends that the testimonies of the prosecution witnesses lack credibility and fail to inspire confidence. Initially, the report was lodged against unknown persons. Further, there is discrepancy in evidence of the witnesses regarding the age of the victim. The learned Counsel submits that at the time of the incident the applicant was 21 years old. The victim accompanied the applicant on her own

free will. The learned Counsel submits that the applicant has been in custody for two years six months and 12 days and was on bail during the trial and did not misuse the liberty. The applicant is ready to comply with any conditions this Court imposes and cooperate fully with the appeal proceedings if released on bail.

4. Ms Manisha Tidke, the learned Additional Public Prosecutor representing respondent No.1/ State, and Ms Shradha Nakadi, the learned Counsel appearing for respondent No.2/ victim, jointly oppose the applicant's request and refer to the seriousness of the charge under which the applicant is convicted. They submit that the evidence on record strongly supports the prosecution's case and does not warrant the applicant's release on bail. The learned APP further submits that the defence put forth by the applicant relating to false implication on account of quarrel between the applicant and the victim's father seems to be improbable, and there is no reason to disbelieve the testimony of the victim.

5. This Court has given anxious consideration to the rival contentions.

6. It is a well-settled position in law that the appellate Court may 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 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, while granting bail, the appellate Court has the discretion to impose certain conditions. A profitable reference in this regard can be made to the decisions in *Bhagwan Rama Shinde Gosai v. State of Gujarat*¹ and *Narcotic Control Bureau v. Lakhwinder Singh*².

7. Upon perusing the records, the alleged incident occurred in 2018. The sentence imposed upon the applicant is of ten years. The applicant was arrested on 3 September 2018 and released on bail on 14 March 2019. After pronouncement of the impugned judgment on 24 March 2023, the applicant has been languishing in jail since then. The applicant was 21 years

¹ (1999) 4 SCC 421

² 2025 INSC 190

old and the victim was almost 14 when the alleged incident occurred. While this Court acknowledges the arguments presented by the learned APP and the learned Counsel for respondent No.2 regarding the gravity of the offence and the post-conviction stage of the proceedings, it is imperative to consider that the present appeal has been filed in 2024 and is unlikely to be heard in the near future due to the pendency of the older appeals. Moreover, there is nothing on record to suggest that exceptional circumstances exist to justify the refusal of the relief prayer for. Considering the above, this Court is inclined to allow the present application in the following terms:

- (i) The sentence imposed upon the applicant vide judgment and order dated 24 March 2023 passed by the Special Court for Protection of Children from Sexual Offences Act, 2012, Mumbai, in POCSO Special Case No.597 of 2018, 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 or contact her or her family members in any manner whatsoever.

(iv) The applicant shall update the investigating officer about his residential address and contact details.

8. The interim application stands disposed of accordingly.

(R.N. Laddha, J.)