

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

Interim Application No.1795 of 2024

in

Criminal Appeal No.439 of 2024

Dashrath Vitthal Shinde

Age 53 years, Occ. Labour,

R/o. Parshi Bungalow, Plot No.207,

Behind Ramwadi Police Chowky,

Solapur, Dist.: Solapur

... Applicant

versus

1. The State of Maharashtra

(Copy to be served upon Public

Prosecutor, High Court (A.S.) Mumbai.

2. A.B.C.

Original Complainant

(At the instance of Salgar Vasti

Police Station, Vide C.R. No. /

FIR No. 59/2013)

... Respondents

Mr Sachinkumar Rajepandhare, for the applicant.

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

Mr Nitin Gaware, for respondent No.2 (through Legal Aid).

Coram: R.N. Laddha, J.

Date: 18 March 2025

P.C.:

Heard Mr Sachinkumar Rajepandhare, the learned Counsel appearing on behalf of applicant, Ms Manisha Tidke, the learned Counsel representing respondent No.1/ APP, and Mr Nitin Gaware, the learned Counsel appearing for respondent No.2.

2. The applicant faced trial in Sessions Case No.380 of 2013 before the Sessions Court at Solapur for committing the offences punishable under Section 376 of the Indian Penal Code.

3. The offence involves allegations that the applicant, under the pretext of informing the victim about a call from her mother, entered the house in the absence of her father and sexually assaulted the victim on multiple occasions. The applicant also threatened the victim to prevent her from disclosing these incidents. Thereafter, a crime bearing FIR No.59 of 2013 was lodged at Salgar Vasti Police Station, Solapur, a case was registered, an investigation was carried out, and a charge sheet was filed. During the trial, seven witnesses were examined by the prosecution and three by the defence. By a judgment and order dated 7 March 2024, the trial Court convicted the applicant under Section 376 IPC and sentenced him to suffer rigorous imprisonment for ten years and pay a fine of Rs.10,000/-, with default stipulations.

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

5. The learned Counsel appearing on behalf of the applicant argues that there are considerable shortcomings in the

prosecution's evidence and claims that the testimonies of the prosecution witnesses lack credibility and fail to inspire confidence. The main thrust of his arguments is that the DNA analysis was mishandled, as the samples were sent to a laboratory in Pune rather than Mumbai. Further, the learned Counsel submits that since the applicant was on bail throughout the trial, he should receive the same treatment during the pendency of the appeal.

6. The learned Additional Public Prosecutor representing respondent No.1/State and the learned Counsel appearing for respondent No.2 jointly oppose the applicant's request, citing the seriousness of the charge on which the applicant has been convicted and that the evidence on record strongly supports the prosecution's case. They also submit that the victim was mentally retarded when the incident occurred. The applicant's actions resulted in her becoming pregnant and giving birth to a child. The learned Counsel for respondent No.2 further submits that if the applicant's sentence is suspended and he is released on bail, he could potentially endanger the victim and her family members.

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

8. It is a settled position in law that suspending a sentence

for short-term imprisonment during the pendency of the appeal is the general norm. However, in situations where releasing the accused by suspending his sentence may pose a threat to society or give rise to significant concerns, the appellate Court may refrain from exercising its discretion in favour of the accused. In ***Kiran Kumar v. State of M.P.***, (2001) 9 SCC 211, the Hon'ble Supreme Court held as follows:

“3. This Court has held in Bhagwan Rama Shinde Gosai v. State of Gujarat [(1999) 4 SCC 421 : 1999 SCC (Cri) 553] that when a person is convicted and sentenced to a short-term imprisonment the normal rule is that when his appeal is pending the sentence should be suspended and rejection is only by way of exception and be put forward for such rejection. In such case also every endeavour should be made to have the appeal posted for early hearing and disposal. If the short-term sentence is allowed to run out during the pendency of the appeal, the appeal itself will become, for all practical purposes, infructuous so far as the appellant is concerned. It does not mean that the appellate court should suspend the sentence, if its consequence would be a danger to the society or any other similar difficulties.”

9. Similarly, 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.”

10. In the present case, it is undisputed that the victim identified the applicant. The records show that the witnesses support the prosecution’s case, and their testimonies remain unshaken and prove the applicant’s active role in the commission of the offence. The medical evidence fully supports the prosecution’s narrative. Furthermore, the testimonies of PW-7 (investigating officer), DW-1 (police station officer), DW-2 (carrier), and DW-3 (assistant chemical analyser) confirm that the DNA sample was properly sealed, suggesting that no fault can be attributed to the DNA report as claimed by the applicant.

11. Additionally, the circumstance of the applicant being enlarged on bail during the trial loses its relevance following the conclusion of the trial proceedings. A profitable reference in this regard can be made to the decision in ***Kishori Lal v. Rupa***, (2004) 7 SCC 638, where the Hon’ble Supreme Court held as follows:

“6. The mere fact that during the trial, they were granted bail and there was no allegation of misuse of liberty, is really not of much significance. The effect of bail granted during trial loses significance when on completion of

trial, the accused persons have been found guilty. The mere fact that during the period when the accused persons were on bail during trial there was no misuse of liberties, does not per se warrant suspension of execution of sentence and grant of bail. What really was necessary to be considered by the High Court is whether reasons existed to suspend the execution of sentence and thereafter grant bail. The High Court does not seem to have kept the correct principle in view.”

12. This Court is conscious and mindful that the appeal is admitted and pending for final hearing. However, it cannot be overlooked that the applicant has been found guilty and convicted by a competent criminal court. Therefore, the initial presumption of innocence in favour of the accused is no longer available to the applicant. The findings of the trial Court, which convicted the applicant for the offence punishable under Section 376 of the IPC, are well-reasoned and supported by credible evidence.

13. Given the above, no grounds are made out for suspending the sentence or granting bail to the applicant during the pendency of the appeal. As a result, the application stands rejected.

(R.N. Laddha, J.)