

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

Interim Application No.2162 of 2024

In

Criminal Appeal No.570 of 2024

Rajesh Aba Devgadkar
Aged: 43 Years, Occ: Service,
R/at: Room No.411, Building
No.23, Mahatma Phule Nagar,
Near Maharashtra Nagar,
PMGP Colony, Mankhurd (W),
Mumbai 400088.

At present lodged at
Thane Central Prison.

... Applicant

versus

1. The State of Maharashtra
(At the instance of Vikroli Police
Station vide CR No.306 of 2017)

2. XYZ

(At the instance of Vikroli Police
Station, CR No.306 of 2017)

... Respondent

Ms Mallika Sharma, along with Ms Asha Joshi, for the
applicant.

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

Mr Chetan Hadollikar, along with Ms Pooja Dalvi i/by CHH
Legals, for respondent No.2.

Coram: R.N. Laddha, J.
Date: 25 April 2025.

P.C.:

Heard Ms Mallika Sharma, the learned Counsel appearing on behalf of the applicant, Ms Sangita Phad, the learned Additional Public Prosecutor representing respondent No.1/ State, and Mr Chetan Hadolikor, the learned Counsel appearing for respondent No.2.

2. The applicant faced trial in Sessions Case No.202 of 2018 before the Sessions Court, Mumbai, for the offences punishable under Sections 354, 376, 377 and 506 of the Indian Penal Code ('IPC'). By the judgment and order dated 2 April 2024, the applicant was acquitted of the offence punishable under Section 377 of the IPC and convicted for the offences punishable under Sections 354, 376(2)(f)(n) and 506 of the IPC. The applicant was sentenced as follows: (i) imprisonment for one year for the offence punishable under Section 354 IPC, (ii) rigorous imprisonment for ten years and pay a fine of Rs.20,000/- (with default stipulations) for the offence punishable under Section 376(2)(f)(n) of IPC, and (iii) imprisonment for one year for the offence punishable under Section 506 of IPC. 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. Ms Mallika Sharma, the learned Counsel appearing on behalf of the applicant, asserts that the prosecution's case suffers from material inconsistencies and significant evidentiary shortcomings. The learned Counsel contends that there has been an inordinate and inexplicable delay in filing the complaint. According to the victim's version of events, the applicant engaged in acts of inappropriate touching in 2004. As the victim matured, she resisted the applicant's advances and informed her mother about these incidents; however, no formal complaint was lodged at that time. The first alleged incident of penetrative sexual assault reportedly occurred in March 2007; again, no action was taken. It was not until February 2016 that the victim disclosed the incident to her mother, yet no complaint was filed then either. The report of the crime only took place on 8 July 2017, following a significant delay of ten years. The victim's testimony indicates that the complaint was filed in a fit of rage, as the family had become exasperated with the applicant's drinking habits, and that the complaint was later withdrawn. The victim was subsequently encouraged by a social worker to file an FIR against the applicant. Accordingly, the victim addressed a letter to the ACP on 17 October 2017, indicating that the officers at Vikhroli Police Station did not act on her complaint and dissuaded her from proceeding with the case. However, during her examination, no evidence regarding

this claim was presented. The learned Counsel emphasises that the evidence of PW-1 and PW-5 lacks specificity concerning the crime, and no independent witnesses were called to testify. Ms Sharma argues that the testimonies of the prosecution witnesses are fraught with contradictions, omissions and discrepancies, rendering them unreliable and insufficient to establish the applicant's guilt beyond a reasonable doubt. The overall quality of the evidence does not inspire confidence. The learned Counsel further submits that the applicant has been wrongfully accused of the alleged offence, and his continued incarceration amounts to a grave miscarriage of justice. She emphasises that the applicant has been in custody for over seven years out of the ten-year sentence and submits that the applicant is ready to abide by any conditions imposed by this Court and cooperate fully with the appeal proceedings if released on bail. In support of her contentions, the learned Counsel cites the decisions in *(i) Atul @ Ashutosh Vs State of Madhya Pradesh, SLP (Cri) No.1049 of 2024*, and *(ii) Nanhe Lal Verma Vs State of Madhya Pradesh, SLP (Cri) No.14769 of 2024*.

4. Ms Sangita Phad, the learned Additional Public Prosecutor representing respondent No.1/ State, and Mr Chetan Hadolikar, the learned Counsel appearing for respondent No.2, opposing the applicant's request, refer to the seriousness of the

charge on which the applicant has been convicted and submit that the applicant is the victim's relative. Mr Hadollikar further asserts that after a thorough and detailed examination of the evidence, the trial Court rightly concluded that the applicant's guilt was proven beyond a reasonable doubt. He contends that the evidence on record forms a robust foundation for the conviction and does not warrant suspending the applicant's sentence and his release on bail.

5. This Court has considered the rival submissions canvassed across the Bar and perused the records.

6. In *Bhagwan Rama Shinde Gosai Vs State of Gujarat*, (1999) 4 SCC 421, the Hon'ble Supreme Court observed as follows:

“3. When a convicted person is sentenced to a fixed period of sentence and when he files an appeal under any statutory right, suspension of sentence can be considered by the appellate court liberally unless there are exceptional circumstances. Of course, if there is any statutory restriction against suspension of sentence it is a different matter. Similarly, when the sentence is life imprisonment the consideration for suspension of sentence could be of a different approach. But if for any reason the sentence of a limited duration cannot be suspended every endeavour should be made to dispose of the appeal on merits more so when a motion for expeditious hearing

of the appeal is made in such cases. Otherwise the very valuable right of appeal would be an exercise in futility by efflux of time. When the appellate court finds that due to practical reasons such appeals cannot be disposed of expeditiously the appellate court must bestow special concern in the matter of suspending the sentence so as to make the appeal right, meaningful and effective. Of course, appellate courts can impose similar conditions when bail is granted.”

7. Similarly, in *Narcotic Control Bureau Vs Lakhwinder Singh, 2025 INSC 190*, the Hon’ble Supreme Court observed as follows:

“5.Therefore, in our view, if a case is made out for the grant of suspension of sentence and/or bail in deserving cases on merits, the Court is not powerless to grant relief of suspension of sentence and bail pending an appeal, even if an accused has not undergone half of the sentence. There cannot be a rule of thumb that a convict cannot be released on bail pending an appeal against conviction unless he has undergone half of substantive sentence.

6. In the case of fixed-term sentences, if the Courts start adopting a rigid approach, in a large number of cases, till the appeal reaches the stage of the final hearing, the accused would undergo the entire sentence. This will be a violation of the rights of the accused under Article 21 of the Constitution. Moreover, it will defeat the right of appeal.”

8. In the present case, the evidence on record reveals that the victim had earlier preferred a complaint out of a moment of anger to oust the applicant from the house due to his drinking habits. The victim subsequently withdrew this complaint. Later, the victim once again lodged a complaint against the applicant, citing dissuasion by the police officials to lodge the complaint. Notably, the earliest incident of the alleged sexual assault occurred in 2004; however, until 2017, the victim did not file a formal complaint. While this Court takes due note of the submissions made by the learned APP and the learned Counsel for respondent No.2 concerning the seriousness of the offence and the fact that the matter is at the post-conviction stage, it is essential to factor that the applicant has already undergone more than seven years of imprisonment out of the ten-year sentence. The appeal challenging the conviction has been filed in 2024. If relief is denied at this stage, the applicant is likely to complete the entire sentence before the appeal is finally heard. Considering the evidence on record and the long incarceration of the applicant, this Court is inclined to exercise its discretion in favour of the applicant. Hence, the following order:

ORDER

- (i) The sentence imposed upon the applicant vide the judgment and order dated 2 April 2024 passed by the Sessions Court,

Mumbai, in Sessions Case No.202 of 2018, shall stand 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 two or more sureties in the like amount.

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

(iv) The applicant shall refrain from entering the jurisdiction of the concerned police station where the victim resides and shall also refrain from contacting the victim.

9. The interim application stands disposed of accordingly.

(R.N. Laddha, J.)