

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

Interim Application No.2274 of 2024

In

Criminal Appeal No.857 of 2024

Mohd Aarif Akbarali Shaikh
Prisoner No.C-8058
Age: 27 years (approx.),
Occ: Labourer R/o. Laukana,
Post - Dharampur, Dist. Baharaich
Another Address - Bharatiya Nagar
Zhopadpatti, Below SCLR Bridge,
Kurla West, Mumbai;
Presently in Kolhapur Central Prison,
Kolhapur

... Applicant

versus

1. State of Maharashtra
Through VB Nagar Police Station,
Kurla, Mumbai
C.R. No.60/2019
Copy to be served on the Public Prosecutor,
Appellate Side, Bombay High Court

2. XYZ

Complainant - Mother of Victim
R/o Bharatiya Nagar Zhopadpatti,
Near Hanuman Mandir, First Lane,
Below SCLR Bridge, Kurla West, Mumbai

... Respondents

Mr Sushan Mhatre, for the applicant (through Legal Aid).

Mr MG Patil, APP, for respondent No.1/ State.

Ms Priyanka H Chavan, for respondent No.2 (through Legal Aid).

PSI Ravindra Kelkar, VB Nagar Police Station, is present.

Coram: R.N. Laddha, J.

Date: 25 April 2025.

P.C.:

The applicant faced trial in POCSO Special Case No.469 of 2019 before the Court of Special Judge under the Protection of Children from Sexual Offences Act, 2012, Mumbai, for offences punishable under Sections 363 and 376 of the Indian Penal Code ('IPC') and Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act'). By the judgment and order dated 20 November 2023, the applicant was convicted for these offences and sentenced to suffer rigorous imprisonment for ten years and pay a fine of Rs.10,000/- (with default stipulations) for the offence punishable under Section 6 of the POCSO Act. No separate sentence was imposed for other offences.

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

3. Mr Sushan Mhatre, the learned Counsel appearing on behalf of the applicant, points out the alleged shortcomings in the prosecution's case and contends that the testimonies of the prosecution witnesses lack credibility and fail to inspire confidence. The age of the victim remains to be proved by the prosecution and the ossification test was not conducted. The evidence of the doctor, PW-8, reveals that there is no history of attack by fist blows or biting, strangulation, throttling, consumption of sedative or sexual assault. The key allegations do not align with the medical evidence. The learned Counsel further submits that out of the ten-year sentence, the applicant has already undergone imprisonment for about six years. The applicant is ready to comply with any conditions this Court imposes and cooperate fully with the appeal proceedings.

4. Mr MG Patil, the learned Additional Public Prosecutor representing respondent No.1/ State, and Ms Priyanka Chavan, the learned Counsel appearing for respondent No.2, opposing the applicant's request and referring to the seriousness of the charge under which the applicant is convicted, jointly submit that the evidence on record strongly supports the prosecution's case and does not warrant suspension of the sentence and the applicant's release on bail.

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

6. In *Bhagwan Rama Shinde Gosai v. State of Gujarat*¹, 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. In the present case, the alleged incident occurred in 2019.

¹ (1999) 4 SCC 421

There are certain contradictions and omissions in the evidence of the victim. PW-7, the principal of the school, has admitted in his cross-examination that there are no documents in the school records submitted by the parents of the victim in respect of her birth date and there is over writing in the place of birth in Exhibit 47. 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 essential to recognise that the applicant has been in custody for about six years out of the ten-year sentence. Given that the appeal was filed in 2024 and is unlikely to be heard immediately due to the pendency of the older appeals, a case is made out to grant the applicant the relief of suspension of sentence pending the appeal. In these circumstances, the applicant is entitled to be released on bail. Hence, the following order:

ORDER

(i) The sentence imposed upon the applicant vide judgment and order dated 20 November 2023 passed by the Court of Special Judge under the Protection of Children from Sexual Offences Act, 2012, Mumbai, in POCSO Special Case No.469 of 2019, stands suspended during the

pendency of the appeal, and 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.

(ii) The applicant shall keep the investigating officer informed and updated about his contact number and address.

8. The interim application stands disposed of accordingly.

(R.N. Laddha, J.)