

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

Interim Application No.2369 of 2024

In

Criminal Appeal No. 801 of 2022

Ganesh Bhagvat Kamble

Age: 20 years,

R/o. Gaoor Masalga,

Post. Panchincholi,

Tal. Nilanga, Dist. Latur.

(at present is in Yerwada Jail)

... Applicant

versus

1. The State of Maharashtra

Through P.I. Sinhagad

Police Station, Pune.

2. XYZ

(Through Sinhagad Police Station, Pune)

... Respondents

Mr Aniket Nikam, i/b. Amit Icham, for the applicant.

Mr VN Sagare, APP, for the respondent No.1/ State.

Mr Shailesh A Chavan, for respondent No.2 (Legal Aid).

Coram: R.N. Laddha, J.

Date: 20 January 2025.

P.C.:

By this application, the applicant seeks suspension of sentence and grant of bail pending the hearing and final disposal of the appeal.

2. The applicant/accused faced trial in Special Sessions Case No.448 of 2015. By a judgment and order dated 4 January 2020, the applicant stood convicted for the offences punishable under Sections 363, 366-A, 376 of the Indian Penal Code ('IPC'); and Section 4, 6, 8 and 10 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act'). The applicant was sentenced as follows : (i) rigorous imprisonment for three months for the offence punishable under Section 363 of the IPC and a fine of Rs.2000/-(with default stipulation), (ii) rigorous imprisonment for five years and a fine of Rs.3,000/- for the offence under Section 366-A of the IPC (with default stipulation); and (iii) rigorous imprisonment for ten years for the offence punishable u/s 376 of IPC and Sections 4, 6, 8 and 10 of the POCSO Act (with default stipulation). These sentences were directed to run concurrently.

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

4. Mr Aniket Nikam, the learned Counsel appearing on behalf of the applicant, submits that at the time of incident the applicant was 19 years and the victim was 16 years of age. The co-accused were already acquitted by the trial Court. The applicant is behind the bar for more than five years and he was

on bail during the pendency of the trial. The applicant is ready to abide by all the conditions this Court imposes if released on bail.

5. Mr VN Sagare, the learned Additional Public Prosecutor representing the respondent No.1/ State and Mr Shailesh Chavan appearing on behalf of respondent No.2, opposing the request, emphasises the gravity of the offence and contend 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.

6. This Court has given anxious consideration to the rival submissions canvassed across the Bar and perused the record.

7. 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.”

8. 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 current post-conviction stage of the proceedings, it is essential to recognise that at the time of incident the applicant was 19 years of age and has already undergone imprisonment for more than five years out of total sentence of ten years. Further, the applicant was on bail during the pendency of the trial. The appeal has been filed in 2022 and is unlikely to be heard immediately. In these circumstances, a case is made out for grant of suspension of sentence pending the appeal and release on bail. Hence, the following order:

ORDER

(i) The sentence imposed upon the

applicant vide judgment and order dated 4 January 2020, passed by the learned Additional Sessions Judge, Pune, in Special Sessions Case No.448 of 2015, is suspended during the pendency of the appeal, subject to the applicant executing a PR Bond of Rs.25,000/- and furnishing one or more sureties in the like amount.

(ii) The applicant shall not make any contact with the victim and her family members.

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

9. The interim application stands disposed of accordingly.

(R.N. Laddha, J.)