

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

**Interim Application No. 2686 of 2024
In
Criminal Appeal No.777 of 2024**

Nasibulla Yadali Khan

Age: 39 years, Occ: Tailor

R/at Anand Nagar Zopadpatti,
MHDDA Colony, Mulund East,
Mumbai 400 081.

(at present in Aurangabad
Central prison)

... Applicant.

Versus

1. The State of Maharashtra
(at the instance of Navghar Police
Station)

2. XYZ (Victim)
Anand Nagar Zopadpati,
MHADA Colony, Mulund (East) ... Respondents.

Mr Rishikesh Mundargi, along with Ms Paavani Chadha i/by
Shradha Sawant for the applicant.

Mr VN Sagare, APP, for respondent/State.

Mr Kartik S Garg, for respondent No.2.

Coram: R.N. Laddha, J.
Date: 30 January 2025.

P.C.:

The applicant faced trial in POCSO Special Case No.608 of 2019. By a judgment and order dated 16 April 2024, the applicant stood convicted for the offences punishable under Sections 376(2)(n) and 506(2) of the Indian Penal Code ('IPC') and Section 6 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act'). In terms of Section 42 of the POCSO Act, the applicant was sentenced to suffer rigorous imprisonment for ten years and a fine of Rs.10,000/- (with default stipulations) for the offence under Section 6 of the POCSO Act. The applicant was also sentenced to suffer rigorous imprisonment for seven years for the offence under Section 506(2) of IPC. These sentences were directed to run concurrently.

2. Aggrieved and dissatisfied, the applicant preferred an appeal before this Court and filed the present application under Section 389 of the Code of Criminal Procedure, 1973. The substantive relief reads as follows:

“That this Hon’ble Court may be pleased to allow the present application and suspend the substantive sentence imposed on the Applicant and further be pleased to release the Applicant on bail pending the hearing of

the Criminal Appeal on such terms and conditions as this Hon'ble Court may deem fit and proper.”

3. Mr Rishikesh Mundargi, the learned Counsel appearing on behalf of the applicant, highlighting the alleged deficiencies in the prosecution case, submits that the medical evidence does not align with the allegations. The learned Counsel submits that the applicant has been languishing in jail since 14 August 2019 and has already completed a little more than half the sentence imposed by the Sessions Court. The applicant is willing to cooperate fully with the appeal proceedings and abide by all the conditions this Court imposes if released on bail, including not entering the jurisdiction of the concerned police station where the victim resides.

4. Mr VN Sagare, the learned Additional Public Prosecutor representing the respondent/ State and Mr Kartik Garg, appearing on behalf of respondent No.2, opposing the applicant's request, refer to the seriousness of the charge on which the applicant has been convicted and argue that the evidence on record, particularly the statement of the victim, strongly supports the prosecution's case and does not warrant the grant of bail.

5. This Court has given anxious consideration to the rival

submissions canvassed across the Bar and perused the record.

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. 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 the applicant has already undergone imprisonment for more than five years out of the total sentence of ten years. The appeal has been filed in 2024 and is unlikely to be heard immediately. In these circumstances, a case is made out for suspension of the sentence and release on bail during the pendency of the appeal. Hence, the following order:

ORDER

(i) The sentence imposed upon the applicant vide judgment and order dated 16 April 2024 passed by the learned Special Judge under POCSO Act, Mumbai, in POCSO Special Sessions Case No.608 of 2019, stands 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 refrain from entering the jurisdiction of the concerned Police Station where the victim resides and making contact, in any manner, with the victim and her family members.

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

8. The interim application stands disposed of accordingly.

[R.N. Laddha, J.]