

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

Interim Application No.2998 of 2024

In

Criminal Appeal No.816 of 2024

Yogesh Gulab Hemade

Age:29 years, Occ: Service,

R/at: Ambedkar Nagar,

Near Datta Mandir, Dehu Road,

Taluka: Haveli, Dist. Pune

(Appellant in Yerwada Jail Pune)

... Applicant

versus

1. State of Maharashtra

Through Dehu Road Police Station

Dehu Road, Pune - 412101

2. XXXX

Victim, CR No.I-188/2017

R/at: Ambedkar Nagar,

Near Datta Mandir, Dehu Road,

Taluka: Haveli

... Respondents

Mr Ganesh K Sovani, for the applicant.

Dr Ashwini A Takalkar, APP, for respondent No.1/ State.

Mr Maitreya Shukla, for respondent No.2 (through Legal Aid)

Coram: R.N. Laddha, J.

Date: 18 February 2025.

P.C.:

The applicant faced trial in Special Case No.76 of 2022 before the Court of Additional Sessions Judge, Vadgaon Maval, Pune, for offences punishable under Sections 376(i) and 506 of the Indian Penal Code ('IPC') and Sections 3, 4, 7, 8, 11 and 12 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act'). By a judgment and order dated 8 April 2024, the applicant was convicted for the offences punishable under Section 376 of the IPC and Sections 4, 8 and 12 of the POCSO Act and sentenced to suffer rigorous imprisonment for twenty years and pay a fine of Rs.10,000/- (with default stipulations) for the offence punishable under Section 4 of the POCSO Act. No separate sentence was imposed upon the applicant for offences punishable under Section 376 of the IPC and Sections 8 and 12 of the POCSO Act, as the sentence was imposed under Section 4 of the POCSO Act. These sentences were to run concurrently.

2. Aggrieved and dissatisfied, the applicant preferred an appeal before this Court and, by the present application, seeks relief in terms of Section 389 of the Code of Criminal Procedure, 1973 ('CrPC').

3. Mr Ganesh Sovani, the learned Counsel appearing on behalf of the applicant, points out the alleged shortcomings in

the prosecution's case and contends that the key medical evidence contradicts the allegations against the applicant and the prosecution's failure to examine independent witnesses raises further doubts on its case. Further, the investigating officer's failure to seize the alleged cloth purportedly used by the applicant to gag the victim and the omission to record the victim's statement under Section 164 of the CrPC significantly undermines the foundation of the case. The learned Counsel further argues that there has been a substantial delay in concluding the trial. The alleged offence occurred on 10 May 2017, and the First Information Report was filed the following day, 11 May 2017. Although the charge sheet was filed on 7 August 2017, charges were framed belatedly on 17 August 2019. The recording of evidence commenced only on 17 November 2022, and the applicant's statement under Section 313 of the CrPC was recorded on 31 January 2024. The learned Counsel submits that the applicant was arrested on 11 May 2017 and has been languishing in jail since then. The applicant is ready to comply with any conditions this Court imposes and cooperate fully with the appeal proceedings.

4. Dr Ashwini Takalkar, the learned Additional Public Prosecutor representing respondent No.1/ State, and Mr Maitreya Shukla, 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

¹ (1999) 4 SCC 421

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 *In Narcotic Control Bureau v. Lakhwinder Singh*², 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.”

² 2025 INSC 190

8. A preliminary review of the records suggests that there are significant gaps in the investigation. Notably, the victim's statement was not recorded as required under Section 164 CrPC, and there was no effort to seize the cloth allegedly used to gag the victim. Additionally, there appears to be a significant delay in the trial's progress. The applicant, who was arrested on the same day the FIR was lodged, has already spent nearly seven years and nine months in custody. 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 served a substantial period of the sentence imposed on him. Given that the appeal was filed in 2024 and is unlikely to be heard immediately due to the pendency of the older appeals. In these circumstances, the applicant is entitled to the relief of suspension of sentence pending the appeal and grant of bail. Hence, the following order:

ORDER

(i) The sentence imposed upon the applicant vide judgment and order dated 8 April 2024 passed by the Court of Additional Sessions Judge, Vadgaon Maval, Pune, in Special Case No.76 of 2022, 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 not enter the jurisdiction of the concerned Police Station and shall not contact the victim or her family members in any manner.

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

9. The interim application stands disposed of accordingly.

(R.N. Laddha, J.)