

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

**Interim Application No. 3308 of 2024
in
Criminal Appeal No. 1013 of 2024**

Micheal Fransis Joseph Anthony
Age 54 years, Occ. not known,
R/at. Gala No.6, Near Mosambi
Kata, Crawford Market,
Mumbai - 400 001.

Presently in Nashik Central Prison, Nashik ... Applicant

versus

1. The State of Maharashtra
Through Public Prosecutor,
High Court, Bombay.

2. Miss 'S'
Victim, Age 21 years, Occ. Not known,
R/at. 15/6, MHADA Chawl,
Kokari Agar, Wadala East,
Mumbai - 400 037.

... Respondents

along with

**Interim Application No. 714 of 2024
in
Criminal Appeal No. 716 of 2024**

Shendi @ Kailas Devram Nagrikar
Age 39 years, Occ. Labourer,
R/at. Gala No.6, Near Mosambi

Kata, Crawford Market,
Mumbai - 400 001.

At present applicant is at Nashik Jail

... Applicant

versus

1. The State of Maharashtra

At the instance of Wadala T.T. Police
Station vide C.R. No.210/2018

2. XYZ

Wadala T.T. Police Station
C.R. No.210/2018.

... Respondents

Mr Lokesh Zade, for the applicant/ accused No.3 (through
Legal Aid), in IA/3308/2024.

Mr Kedar Purav i/b Kirti Godbole, for respondent No.2
(through Legal Aid), in IA/3308/2024.

Ms Kanchan Pawar, for the applicant/ accused No.2 (through
Legal Aid), in IA/714/2024.

Ms Sneha Mishra i/b Premkumar Pandey, for respondent No.2
(through Legal Aid), in IA/714/2024.

Ms Sangita E Phad, APP, for respondent No.1/ State in both
Interim Applications.

Coram: R.N. Laddha, J.

Date: 25 April 2025

P.C.:

Heard the learned Counsel for the parties and perused the
records.

2. The applicants (accused Nos.2 and 3) faced trial in Special Case No.557 of 2018 before the Court of Special Judge under the Protection of Children from Sexual Offences Act, 2012, at Mumbai, for the offences punishable under Section 363, 376D and 328 of the Indian Penal Code ('IPC') and Sections 4, 6, 8, 10 and 12 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act'). By the judgment and order dated 13 July 2022, the applicants were acquitted of the offences punishable under Sections 328 read with 34 of the IPC and Section 10 of the POCSO Act and convicted for the offences punishable under Section 376D of the IPC and Sections 6 and 12 of the POCSO Act. The applicants were 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 376D of the IPC. In view of Section 42 of the POCSO Act, no separate sentence was imposed upon the applicants for the offences punishable under Sections 6 and 12 of the POCSO Act.

3. Aggrieved, the applicants preferred appeals before this Court and, by the present applications, seek suspension of sentence and release on bail.

4. The learned Counsel appearing for the applicants, assert

that there are significant shortcomings in the prosecution's case. They emphasise that the testimonies of the prosecution witnesses lack credibility and do not inspire confidence. They highlight that there was a considerable delay in filing the complaint, which raises concerns regarding the reliability of the allegations. They further contend that the prosecution has failed to establish the applicants' guilt beyond a reasonable doubt. Additionally, they submit that the applicants have been in custody for a significant period and express the applicants' readiness to comply with any conditions that this Court may impose if released on bail.

5. The learned Additional Public Prosecutor representing respondent No.1/ State and the learned Counsel appearing for respondent No.2, oppose the applicants' plea for bail. They emphasise the gravity and sensitivity of the offence for which the applicants stand convicted, asserting that the nature of the charge itself warrants a cautious and stringent approach. They point out that the victim was a minor at the time of the incident, and further highlight the disturbing fact that the applicants are the friends of the victim's father, accused No.1. They further submit that the trial Court, after a thorough and detailed examination of the evidence, rightly concluded that the applicants' guilt was proven beyond reasonable doubt. The

learned APP further contends that the defence failed to bring forth any contradictions, omissions, or discrepancies that strike at the core of the prosecution's case. On the contrary, the evidence on record, including the consistent and cogent testimony of the victim and the corroborating medical evidence, forms a robust foundation for the conviction. According to the learned Counsel, given the serious nature of the offence, the age and vulnerability of the victim, and the evidence on record, no case is made out for suspension of sentence and grant of bail.

6. In *K.C. Sareen v. CBI, (2001) 6 SCC 584*, the Hon'ble Supreme Court held as follows:

"11. The legal position, therefore, is this: though the power to suspend an order of conviction, apart from the order of sentence, is not alien to Section 389(1) of the Code, its exercise should be limited to very exceptional cases. Merely because the convicted person files an appeal in challenge of the conviction the court should not suspend the operation of the order of conviction. The court has a duty to look at all aspects including the ramifications of keeping such conviction in abeyance."

7. Sexual assault on minors can lead to trauma which profoundly affects their adolescent years, leaving them with lasting and irreparable psychological scars. Upon reviewing the

records, the offences for which the applicants have been convicted appear serious. The victim was a minor at the relevant time. Her testimony is consistent with her statement, lending credibility to her version of events. In her deposition before the Court, she gave a coherent and consistent account of the traumatic events she endured. Her deposition remained unshaken during cross-examination, and it reflected both the trauma she endured and the clarity with which she recalled the sequence of events. The key allegations align with the medical evidence. The prosecution has brought forth serious and substantial material that directly implicates the applicants in the commission of the alleged offence. The evidence on record, particularly the consistent testimony of the minor victim and the corroborating medical findings, does not justify the suspension of the sentence and the applicants' release on bail. All the contentions raised by the learned Counsel for the applicants will have to be tested at the final hearing stage. Accordingly, this Court finds no merit in the present applications and the same stand rejected.

(R.N. Laddha, J.)