

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

Interim Application No.3500 of 2024

In

Criminal Appeal No.726 of 2022

Tarik Arman Ali Shaikh

Age- 29 yrs, Occ.Education

R/o 20,2/2 Mahatma Phule Nagar,

AJ Khan Road, Madraswadi, Behind

Worli, Mumbai-400 018

... Petitioner

Versus

1. The State of Maharashtra

At the instance of Worli Police

Station, Mumbai.

2. XYZ (Victim)

Through Worli Police Station

... Respondents.

Ms Sana Khan, Advocate a/w Neha Balani i/by SRK Legal for the
petitioner.

MS MR Tidke, APP for respondent No.1/State.

Ms Shraddha Sawant (Legal Aid) for respondent No.2.

Coram: R.N.Laddha, J.

Date: 28 February 2025.

P.C.:

The applicant faced trial in POCSO Special Case No.351 of 2016 before the Court of Special Judge under the Protection of Children from Sexual Offences Act, 2012, Mumbai, for committing the offences punishable under Section 376 of the Indian Penal Code and Sections 4 and 12 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act').

2. The offence in question stems from the allegation that the applicant committed sexual assault against the victim, a minor, on multiple occasions and issued threats to discourage the victim from disclosing these incidents to any third party. These incidents came to light when the informant witnessed the applicant pulling the victim by her hand while returning home in the early morning after filling water from a common tap and upon subsequent inquiries with the victim. FIR bearing No.77 of 2016 was lodged at Worli Police Station, Mumbai, a case was registered, and an investigation was carried out. At trial, seven witnesses were examined by the prosecution and two by the defence, and the prosecution successfully proved the applicant's guilt. Accordingly, by a judgment and order dated 8 March 2022, the trial Court convicted the applicant for the aforesaid offences and sentenced the applicant as follows: rigorous imprisonment for eight years and a fine of Rs.20,000/- (with default stipulations) for the offence punishable under Section 4 of the POCSO Act and rigorous imprisonment of one year and a fine of Rs.5,000/- (with default stipulations). In view of Section 42 of the POCSO Act, a sentence under Section 376 IPC was not imposed upon the applicant. The sentences were directed to run concurrently.

3. Dissatisfied, the applicant preferred an appeal before this Court and filed an interim application bearing No.2005 of

2022 for suspension of sentence and release on bail. By an order dated 10 October 2022, this Court rejected the applicant's application, citing the existence of sufficient evidence to convict the applicant. Aggrieved, the applicant approached the Hon'ble Supreme Court in a Special Leave Petition (Cri.) bearing Diary No.17451 of 2023. By an order dated 18 May 2023, the Hon'ble Apex Court refused to interfere with the order dated 10 October 2022 passed by this Court and dismissed the SLP by granting liberty to the applicant to renew his request if the appeal is not decided within a year. Against this background, the applicant has once again approached this Court by filing the present application, thereby renewing his request for suspension of sentence and release on bail.

4. Ms Sana Khan, the learned Counsel appearing on behalf of the applicant, submits that there are significant gaps in the prosecution's evidence, and the testimony of the prosecution witnesses lacks credibility and fails to inspire confidence. The main thrust of the arguments is that there was a significant delay in lodging the FIR, a fact overlooked by the trial Court, and that the FSL report was never submitted to the Court. Further, the impugned order fails to consider that the victim did not provide a specific date for the alleged incident and that the key allegations do not align with the medical evidence. The

learned Counsel also submits that the applicant has been languishing in jail since three and a half years out of the eight-year sentence. According to Ms Khan, since the applicant was on bail throughout the trial, he should receive the same treatment during the pendency of the appeal.

5. Ms Manisha Tidke, the learned Additional Public Prosecutor representing respondent No.1/State, opposing the applicant's request, emphasising the seriousness of the charge on which the applicant has been convicted, argues that the victim was mentally retarded and a minor at the time the offence occurred. The evidence on record strongly supports the prosecution's case and does not warrant the grant of bail.

6. Ms Shraddha Sawant, the learned Counsel appearing for respondent No.2, adopting the submissions of the learned APP, further submits that the FSL report doesn't hold much significance as the test was done after a month. The victim's mental capability was assessed by PW-7, and based on the medical assessment, the certificate (Exhibit 31) was issued. Additionally, the medical evidence demonstrates that the victim's hymen was ruptured. The learned Counsel asserts that there was no enmity or any other reason to implicate the applicant falsely, and his guilt was proved beyond reasonable doubt. If the applicant's sentence is suspended and he is

released on bail, he could potentially endanger the victim and her family members.

7. This Court has given anxious consideration to the rival contentions and perused the records.

8. It is a settled position in law that suspending a sentence for short-term imprisonment during the pendency of the appeal is the general norm. However, in situations where releasing the accused by suspending his sentence may pose a threat to society or give rise to significant concerns, the appellate Court may refrain from exercising its discretion in favour of the accused. All these aspects are highlighted in ***Kiran Kumar v. State of M.P.***, (2001) 9 SCC 211, where the Hon'ble Supreme Court observed as follows:

“3. This Court has held in Bhagwan Rama Shinde Gosai v. State of Gujarat [(1999) 4 SCC 421 : 1999 SCC (Cri) 553] that when a person is convicted and sentenced to a short-term imprisonment the normal rule is that when his appeal is pending the sentence should be suspended and rejection is only by way of exception and be put forward for such rejection. In such case also every endeavour should be made to have the appeal posted for early hearing and disposal. If the short-term sentence is allowed to run out during the pendency of the appeal, the appeal itself will become, for all practical purposes, infructuous so far as the appellant

is concerned. It does not mean that the appellate court should suspend the sentence, if its consequence would be a danger to the society or any other similar difficulties.”

9. Similarly, 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.”

10. In the present case, it is undisputed that the victim identified the applicant and the spot where the incidents occurred. The records show that the witnesses support the prosecution’s case, and their testimonies remain unshaken and prove the applicant’s active role in the commission of the offence. The evidence of PW-6 confirms that the victim was sexually assaulted a month prior to the FIR, which aligns with the allegations against the applicant. The medical evidence fully supports the prosecution’s narrative.

11. Furthermore, the circumstance of the applicant being

enlarged on bail during the trial loses its relevance following the conclusion of the trial proceedings. A profitable reference in this regard can be made to the decision in ***Kishori Lal v. Rupa*, (2004) 7 SCC 638**, where the Hon'ble Supreme Court held as follows:

“6. The mere fact that during the trial, they were granted bail and there was no allegation of misuse of liberty, is really not of much significance. The effect of bail granted during trial loses significance when on completion of trial, the accused persons have been found guilty. The mere fact that during the period when the accused persons were on bail during trial there was no misuse of liberties, does not per se warrant suspension of execution of sentence and grant of bail. What really was necessary to be considered by the High Court is whether reasons existed to suspend the execution of sentence and thereafter grant bail. The High Court does not seem to have kept the correct principle in view.”

12. This Court is conscious and mindful that the appeal is admitted and pending for final hearing. However, it cannot be overlooked that the applicant has been found guilty and convicted by a competent criminal court. Therefore, the initial presumption of innocence in favour of the accused is no longer available to the applicant. The findings of the trial Court, which convicted the applicant for the offences punishable

under Section 376 of the Indian Penal Code, as well as Sections 4 and 12 of the POCSO Act, are well-reasoned and supported by credible evidence.

13. Given the above, no grounds are made out for suspending the sentence or granting bail to the applicant during the pendency of the appeal. As a result, the application stands rejected.

[R. N. Laddha, J.]