

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

**Interim Application No.3575 of 2024
In
Criminal Appeal No.969 of 2024**

Vijay Maruti Shinde
Age:42 years, Occ: Labour
R/o: Abaji Chowl, Dawri Nagar,
Gate No.2, Vakola Bridge,
Santacruz East
(Presently at Aurangabad
Central Prison) ... Applicant.

Versus

1. The State of Maharashtra
(Through Vakola Police Station)
2. XYZ
(Through Vakola Police Station) ... Respondents.

Mr Amit Mane, for the applicant.
Mr VN Sagare, APP, for respondent/State.
Ms Kanchan Pawar, for respondent No.2 (through Legal Aid).

**Coram: R.N. Laddha, J.
Date: 31 January 2025.**

P.C.:

In a nutshell, the prosecution alleged that, during a mythological drama performance held between two buildings,

the victim boy went to urinate near a tin shed of one of the two buildings, which was under construction. The applicant approached the victim from behind, showed him an obscene video, and sexually assaulted him. An FIR was lodged, and an investigation was followed. A charge was framed for the offences punishable under Section 354A of the Indian Penal Code ('IPC') and Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act'). At the trial, eight witnesses were examined, and the prosecution successfully proved the applicant's guilt. Accordingly, in POCSO Special Case No.11 of 2018, the Special Court for POCSO Act, Mumbai, convicted the applicant for the offences punishable under Section 354A of IPC and Sections 8 and 12 of the POCSO Act. In terms of Section 42 of the POCSO Act, the applicant was sentenced to suffer rigorous imprisonment as follows: (i) five years and a fine of Rs.1,000/- (with default stipulations) for the offence punishable under Section 8 of the POCSO Act, and (ii) two years and a fine of Rs.1,000/- (with default stipulations) for the offence punishable under Section 12 of the POCSO Act. 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:

“(b) That this Hon’ble Court be pleased suspend the sentence and release the applicant on bail pending the appeal against judgment and sentence passed by the Ld. Special Court for Gr Mumbai in connection of POCSO Special Case No 11 of 2018 whereby applicant was pleased convicted under Section 354-A of the Indian Penal Code and Section 8 and 12 of the POCSO Act by order dated 14.08.2024 ”

3. Mr Amit Mane, the learned Counsel appearing on behalf of the applicant, contends that the alleged incident occurred in the presence of more than twenty people. He points out the alleged deficiency in the prosecution’s case, particularly the testimonies of the prosecution witnesses, Anil Shinde, the informant (PW-1), who claimed to be eyewitness and the victim (PW-2), and submits that they lack credibility and fail to inspire confidence. There is no corroboration to the prosecution’s case. The learned Counsel further submits that the medical evidence does not align with the key allegations. The alleged device from which the alleged indecent video was shown to the victim was never identified by the victim, who was 13 years of age. As per the prosecution, the incident was

first reported by dialling the police helpline; however, the officers who responded to the call were never examined by the prosecution. Mr Mane submits that the applicant was arrested on 8 November 2017 and subsequently released on bail on 25 January 2018 during the pendency of the trial. 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. The learned Counsel relies on the following decisions :

- (i) Nanhe Lal Verma Vs State of Madhya Pradesh¹,*
- (ii) Atul alias Ashutosh Vs State of Madhya Pradesh², and*
- (iii) Bhagwan Rama Shinde Gosai Vs State of Gujarat³.*

4. Mr VN Sagare, the learned Additional Public Prosecutor representing respondent No.1/ State and Ms Kanchan Pawar, 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.

1. SLP (Cri) No.14769 of 2024 dated 25 November 2024.

2. SLP (Cri) No.1049 of 2024.

3. (1999) 4 SCC 421.

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 (supra)*** 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. Similarly, in *Atul (supra)*, the Hon’ble Supreme Court observed as follows:

“Before parting with order, we must note here that notwithstanding several decisions of this Court holding that when there is a fixed term sentence and especially when the appeal is not likely to be heard before completing entire period of sentence, normally suspension of sentence and bail should be granted. We find that in several deserving cases, bail is being denied. Such cases should never be required to be brought before this Court.”

8. In the present case, the applicant is required to undergo the maximum rigorous imprisonment of five years. During the pendency of the trial, the applicant was enlarged on bail. The appeal has been filed in 2024. There is no prospect of the appeal being heard immediately. Considering the arguments advanced across the Bar and the evidence on record, a case is made out for a 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 14

August 2024 passed by the learned Special Judge under POCSO Act, Mumbai, in POCSO Special Sessions Case No.11 of 2018, 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.

9. The interim application stands disposed of accordingly.

[R.N. Laddha, J.]