

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

Interim Application No.3818 of 2024

In

Criminal Appeal No.1041 of 2024

Sanjay Khanduji Ghongade

Aged: 39 years, Occ: Presently Nil

R/at: Jay Bhawani Chawl,

Pada No.4, Room No.258,

Lokmanya Nagar, Thane (W)

Presently lodged at

Adharwadi Prison, Kalyan

... Applicant

versus

1. The State of Maharashtra

(Through Chief Public Prosecutor

High Court, Appellate Side, Bombay)

2. XYZ (Victim)

Through Tilak Nagar Police Station,

Kalyan, Dist. – Thane

... Respondents

Mr Mateen Shaikh, along with Ms Muskan Shaikh and Ms
Monika Chippa, i/by Nadeem Shaikh, for the applicant.

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

Mr Abhijeet Rane, for respondent No.2 (through Legal Aid)

Coram: R.N. Laddha, J.

Date: 18 February 2025.

P.C.:

The applicant faced trial in Atro Special Case No.58 of 2018 (CNR No.MHTH060013502018) before the Court of District Judge-4 & Additional Sessions Judge, Kalyan, for offences punishable under Sections 376, 385, 500 and 506 of the Indian Penal Code ('IPC'), Sections 4, 6 and 8 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act'), and Sections 67(a) and 67(b) of the Information Technology Act, 2000 ('IT Act'). By a judgment and order dated 20 August 2024, the applicant was acquitted of the offences punishable under Section 500 of IPC and Sections 67(a) and 67(b) of the IT Act and convicted for the offences punishable under Sections 376, 385 and 506 of IPC and Sections 4, 6, 8 and 12 of the POCSO Act. The applicant was sentenced as follows: (i) ten years of rigorous imprisonment and a fine of Rs.10,000/- (with default stipulations) for the offence punishable under Section 376 IPC, (ii) two years of rigorous imprisonment and a fine of Rs.1,000/- (with default stipulations) for the offence punishable under Section 385 IPC, and (iii) six months of rigorous imprisonment for the offence punishable under Section 506 IPC. No separate sentence was imposed upon the applicant for offences punishable under Sections 4, 6 and 8 of the POCSO Act, as the sentence was

imposed under Section 376 IPC. These sentences were directed to run concurrently. Aggrieved, the applicant preferred an appeal before this Court, and by this application, seeks suspension of the sentence and release on bail.

2. Mr Mateen Shaikh, the learned Counsel appearing on behalf of the applicant, highlighting the alleged deficiencies in the prosecution's case, contends that the testimony of PW-1, the victim, lacks credibility and fails to inspire confidence. Further, the prosecution failed to examine key witnesses to support its case. Although the mobile phone was seized, the evidence of PW-5, the panch witness, does not reveal whether the device was sealed and labelled. The prosecution also failed to produce the certificate under Section 65B of the Indian Evidence Act, 1872. The learned Counsel further argues that the learned trial Court failed to consider the delay in lodging the complaint, and the key allegations do not align with the medical evidence. Further, the learned Counsel submits that the applicant has been languishing in jail since 30 January 2017 and is willing to abide by any conditions this Court imposes and cooperate fully with the appeal proceedings.

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

Abhijeet Rane, 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.

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

5. In ***Bhagwan Rama Shinde Gosai v. 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.”

6. In the present case, the applicant has been sentenced to suffer maximum rigorous imprisonment for a period of ten years. 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 more than eight years out of the ten-year sentence imposed upon him. Further, upon a perusal of the records, it appears that the prosecution failed to examine the victim's classmate, Hritik Pawar, and her friend, Aditi, at whose residence the alleged incident occurred. Moreover, given that the appeal was filed in 2024 and is unlikely to be heard in the near future due to the pendency of the older appeals, a *prima facie* case is made out for granting the applicant the relief of suspension of sentence pending the appeal. In light of the circumstances, and without expressing any opinion on the

merits of the case, the applicant is entitled to be released on bail. Hence, the following order:

ORDER

(i) The sentence imposed upon the applicant vide judgment and order dated 20 August 2024 passed by the Court of District Judge-4 & Additional Sessions Judge, Kalyan, in Atro Special Case No.58 of 2018 (CNR No.MHTH060013502018), 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.

7. The interim application stands disposed of accordingly.

(R.N. Laddha, J.)