

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

**Interim Application No.3879 of 2024
in
Criminal Appeal No.1059 of 2024**

Tohid Zakir Shaikh

Age 25 years. Occ. Mobile Repairing,

Residing at: Kondhava, Pune.

Presently detained at Yerwada

Central Prison, Pune.

... Applicant

versus

1. The State of Maharashtra

2. XYZ

through his mother ABC

Age 36 years, Occ. Household,

R/at.: Through Kondhawa Police

Station, Pune.

... Respondents

Mr Vikas Shivarkar, for the Applicant.

Mr VN Sagare, APP, for respondent No.1/ State.

Mr Harshvardhan Suryavanshi, for respondent No.2 (through
legal aid)

Coram: R.N. Laddha, J.

Date: 5 May 2025.

P.C.:

The learned Additional Public Prosecutor, on instructions, informs the Court that the notice was served on respondent No.2 and he seeks legal aid assistance. Accordingly, Mr Harshvardhan Suryavanshi is appointed as Advocate to espouse the cause of respondent No.2. Legal fees to be paid by the High Court Legal Service Committee. The learned Counsel for the applicant shall furnish a copy of the Appeal Memo and other relevant papers, including the impugned judgment, to the appointed Advocate.

2. The applicant faced trial in Special POCSO Case No.514 of 2017 before the Court of Special Judge, Pune, for the offences punishable under Section 506 of the Indian Penal Code ('IPC') and Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act'). By the judgment and order dated 7 August 2024, the applicant was acquitted of the offences punishable under Section 506 of the IPC and Section 12 of the POCSO Act and convicted for the offences punishable under Sections 8 and 10 of the POCSO Act. The applicant was sentenced to suffer rigorous imprisonment for five years and pay a fine of Rs.10,000/- (with default stipulations) for the offence punishable under Section 10 of the POCSO Act.

3. Aggrieved thereby, the applicant preferred an appeal before this Court and, by the present application, seeks suspension of the sentence and release on bail.

4. Mr Vikas Shivarkar, the learned Counsel appearing on behalf of the applicant, contends that the prosecution's case is riddled with substantial inconsistencies and significant deficiencies in the evidentiary record. He submits that the deposition of the prosecution witnesses are fraught with contradictions, omissions and discrepancies, thereby rendering their testimonies unreliable and incapable of establishing the applicant's guilt beyond a reasonable doubt. In particular, a reference is made to the testimony of PW-1, the mother of the victim boy, who stated during the examination-in-chief that she had shown the spot of the incident to the police. However, under cross-examination, she admitted that she had never visited the applicant's residence. Furthermore, it is brought to the Court's attention that the residential complex in which the incident is alleged to have occurred is equipped with CCTV surveillance at each entrance. Despite this, no CCTV footage was recovered or produced by the investigating agency, which raises serious doubts about the thoroughness and reliability of the investigating. The learned Counsel also highlights the inconsistency in the prosecution's case as the applicant resides

in building 'J', while the victim was residing in building 'I' at the relevant time, further casting doubt on the possibility of the alleged incident. Additionally, the timeline of the incident is questioned. PW-1 claims that the offence occurred two days prior to Bakri Id. However, the FIR was registered on 29 September 2017, alleging that the incident took place on 27 September 2017. In contrast, it is a matter of record that Bakri Id in the year 2017 fell on 31 August. This discrepancy in dates, the learned Counsel argues, creates a serious doubt regarding the actual occurrence and timing of the alleged offence. Taking into account these various infirmities, the learned Counsel submits that the evidence presented by the prosecution lacks the degree of credibility and coherence required to sustain a conviction. He further submits that the applicant had been enlarged on bail during the course of the trial and had complied with all conditions imposed by the Court. In light of this, and considering that the applicant has already undergone more than one year of the five-year sentence, he prays that the applicant be granted bail during the pendency of the appeal. The learned Counsel further submits that the applicant is ready and willing to abide by any conditions this Court may impose and undertakes to cooperate fully with the appeal proceedings.

5. Mr VN Sagare, the learned Additional Public Prosecutor

representing respondent No.1/ State, and Mr Harshvardhan Suryavanshi, the learned Counsel appearing for respondent No.2/ victim, jointly oppose the applicant's request and refer to the seriousness of the charge on which the applicant has been convicted. They jointly submit that the evidence on record strongly supports the prosecution's case and does not warrant the suspension of sentence and release on bail.

6. This Court has considered the rival submissions canvassed across the Bar and perused the records.

7. 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.”

8. An examination of the records reveals that the alleged incident pertains to the year 2017, and there exist considerable uncertainty surrounding the exact date of the incident. The sentence imposed upon the applicant is a short sentence. The prosecution's case is beset with certain deficiencies, particularly in relation to the date and location of the alleged incident. The applicant was granted bail during the course of the trial and remained on bail throughout the proceedings. There is no allegation or complaint suggesting that the applicant misused the liberty so granted or breached any of the conditions imposed by the trial Court. While this Court takes due note of the arguments presented by the learned APP and learned Counsel for respondent No.2, it cannot be overlooked that the present appeal, challenging the conviction and sentence, was instituted in the year 2024. In view of the substantial pendency

of earlier appeals, it appears unlikely that this appeal will be taken up for final hearing in the near future. If relief is denied at this stage, there is a possibility that the applicant may complete his entire term of sentence before the appeal is heard and decided. It is also relevant to note that the incident does not involve an allegation of penetrative sexual assault. Considering the totality of the circumstances, including the short sentence, the applicant's prior conduct while on bail, the deficiencies in the prosecution's case, and the unlikelihood of an early disposal of the appeal, this Court deems it fit to suspend the sentence and release the applicant on bail during the pendency of the appeal. Hence, the following order:

ORDER

(i) The sentence imposed upon the applicant vide the judgment and order dated 7 August 2024 passed by the Court of Special Judge, Pune, in Special POCSO Case No.514 of 2017, stands suspended during the pendency of the appeal.

(ii) The applicant shall be released on bail upon executing a PR Bond of Rs.25,000/- and furnishing two or more sureties in the like amount.

(iii) The applicant shall inform and update the investigating officer of his contact information and residential details.

(iv) The applicant shall refrain from contacting the victim and his family members in any manner whatsoever.

9. The interim application stands disposed of accordingly.

(R.N. Laddha, J.)