

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

**Interim Application No. 4022 of 2024
in
Criminal Appeal No.1093 of 2024**

Sadam Lalatu Shaikh

Age: 30 years, Occ: Service,

Add: Room No.547, India Nagar,

Fyzer Road, Near Amul Dairy,

Turbhe, Navi Mumbai,

Thane: - 400703

... Applicant

versus

1. The State of Maharashtra

(At the instance of MIDC Police Station,

Mumbai, FIR No.37 of 2019)

2. XYZ

(Through MIDC Police Station

FIR No.37/2019)

... Respondents

Mr VS Tiwari, along with Ms Priti Tiwari i/by Priya Muthupandi, for the applicant.

Ms Manisha R. Tidke, APP, for respondent No.1/ State.

Mr Sandesh Manikhedkar, for respondent No.2 (appointed through legal aid).

Coram: R.N. Laddha, J.

Date: 8 January 2025

P.C.:

None present for respondent No.2/ the victim. Mr Sandesh Manikhedkar is appointed to espouse the cause of respondent No.2. Fees be paid by the High Court Legal Service Committee.

2. The following sequence of events led to the filing of the present application: On 25 January 2019, the applicant allegedly established physical relations with the victim and committed rape on her. Based on these allegations, an FIR was lodged under Sections 363, 376(2)(i) and (j), and 506(II) read with 34 of the Indian Penal Code ('IPC'), and Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act'), by the MIDC Police Station, Navi Mumbai, and an investigation was carried out. At trial, more than 11 witnesses were examined, and the prosecution successfully proved the applicant's guilt. Accordingly, the Additional Sessions Judge, Dindoshi, Mumbai, by a judgment and order dated 12 September 2024 in Special POCSO Case No.156 of 2019, convicted the applicant and sentenced him to suffer rigorous imprisonment for 10 years and fine of Rs.30,000/- for offence punishable under Section 376(2)(i) and (j) of the IPC, and rigorous imprisonment of 2 years and fine of Rs.1,000/- for offence punishable under Section 506(II) of the IPC with

default stipulations. Since the punishment was imposed under Section 376(2)(i) and (j) of the IPC, no separate sentence was imposed on the applicant for the offence punishable under Section 4 of the POCSO Act. Aggrieved thereby, the applicant preferred an appeal before this Court and filed the present application seeking suspension of the sentence and release on bail.

3. Mr VS Tiwari, the learned Counsel appearing on behalf of the applicant, highlighting the alleged deficiencies in the prosecution's case, submits that the victim's age could not have been ascertained as the birth certificate was not placed on record and the headmistress of the victim's school admitted that no record prior to fifth standard was available. The key allegations do not align with the medical evidence. The victim's friend, who disclosed that the victim was taken away on a motorcycle by the accused, was not examined, and the vehicle was not seized. Further, the learned Counsel submits that the trial Court failed to consider the delay in lodging the FIR. The applicant was arrested on 28 January 2019 and has been languishing in jail since then. The learned Counsel submits that the applicant will abide by all the conditions imposed by this Court if released on bail. The applicant will not enter the jurisdiction of the concerned police station where the victim

resides or contact her in any manner. Out of the fixed term sentence of 10 years, the applicant has already undergone more than half of the sentence. To support his submissions, the learned Counsel relies on the decision of the Hon'ble Supreme Court in ***Atul Vs State of Madhya Pradesh***¹.

4. Ms Manisha Tidke, the learned Additional Public Prosecutor representing respondent No.1/ State and Mr Sandesh Manikhedkar, the learned Counsel appearing for respondent No.2, opposing the applicant's request, emphasise the gravity of the offence. They contend 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.

5. This Court has given anxious consideration to the rival contentions and perused the record.

6. In ***Bhagwan Rama Shinde Gosai Vs State of Gujarat***², 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

¹ Criminal Appeal No.579 of 2024 dated 2 February 2024.

² (1999) 4 SCC 421.

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 has undergone a significant term of his sentence, and the appeal challenging the conviction has been filed in 2024 and is unlikely to be heard immediately. If, at this juncture, the relief is denied, the applicant is likely to complete the entire term of the sentence before the appeal is heard. In this backdrop, a case is made out for grant of suspension of sentence pending the appeal and grant of bail. Hence, the following order:

ORDER

(i) The sentence imposed upon the applicant vide judgment and order dated 12 September 2024 passed by the Additional Sessions Judge, Dindoshi, Mumbai, in Special POCSO Case No.156 of 2019, is 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.)