

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

**Interim Application No. 4032 of 2024
In
Criminal Appeal No. 513 of 2024**

Prabhu Vyankatvasi Pillai
Age: 25 years, Occ: Service
Residence at: Room No.4,
Krishna Chawl, Kumbharpada,
Chandansar, Virar (East), Taluka: Vasai.
(Presently Lodged in Yerwada Jail, Pune) ... Applicant

versus

1. The State of Maharashtra
(Through Tulinj Police Station, In
Crime No.13/2018)
2. XYZ
(Through Tulinj Police Station, in
Crime No. 13/2018) ... Respondents

Mr Sandeep Karnik, for the applicant.
Mr Swapnil Pednekar, APP, for respondent No.1/ State.
Mr Rohan Surve, for respondent No.2. (through Legal Aid)

**Coram: R.N. Laddha, J.
Date: 17 February 2025.**

P.C.:

The applicant faced trial in POCSO Special Case No.66 of

2018 before the Court of the Additional Sessions Judge-1, Vasai, at Vasai, District Palghar, for offences punishable under Sections 363 and 376(2)(i) and (n) of the Indian Penal Code ('IPC'), and Sections 4, 6, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act'). By a judgment and order dated 26 March 2019, the applicant was acquitted of the offence punishable under Section 363 IPC and convicted for the offences punishable under Section 376(2)(i) and (n) of IPC and Sections 4, 6, 8 and 12 of the POCSO Act. The applicant was sentenced in terms of Section 42 of the POCSO Act and sentenced to suffer ten years of rigorous imprisonment and pay a fine of Rs.10,000/- (with default stipulations) for the offence punishable under Section 6 of the POCSO Act.

2. Mr Sandeep Karnik, the learned Counsel appearing on behalf of the applicant, highlighting the alleged deficiencies in the prosecution's case, contends that the testimonies of the prosecution witnesses lack credibility and fail to inspire confidence. The learned trial Court failed to consider the delay in lodging the complaint and the fact that the victim's age remained to be proved by the prosecution, and the key allegations do not align with the medical evidence. Further, the learned Counsel submits that the applicant has been in custody

for seven years and two months and is willing to abide by any conditions this Court imposes and cooperate fully with the appeal proceedings.

3. Mr Swapnil Pednekar, the learned Additional Public Prosecutor representing respondent No.1/ State, and Mr Rohan Surve, the learned Counsel appearing for respondent No.2, opposing the applicant's request and referring to the seriousness of the offence, 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. 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 seven years out of the ten-year sentence imposed upon him. Furthermore, 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 26 March 2019 passed by the Court of the Additional Sessions Judge-1, Vasai, at Vasai, District Palghar, in POCSO Special Case No.66 of 2018, 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 where the victim resides.

(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.)