

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

**Interim Application No.4069 of 2024
In
Criminal Appeal No. 1167 of 2024**

Nilesh Keshav Hire

Age-31 years, Occ-Nil

R/o.: Patne Taluka - Malegaon

District-Nashik At present lodged in

Nashik Road Central Prison.

... Applicant

versus

1) The State of Maharashtra
(At the instance of CR No.705
of 2022 of Malegaon Taluka Police
Station, Nashik)

2) XYZ
Through Her Grand Mother
Kantilal Mishrilal Nahar
Age-39 years Occ: Service
R/o.: Patne Taluka: Malegaon
District – Nashik.

... Respondents

Ms Savvy Kolhekar, i/by Aniket Vagal, for the applicant.

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

Ms Paavani Chadha, for respondent No.2. (Legal Aid
appointed)

Coram: R.N. Laddha, J.

Date: 25 February 2025.

P.C.:

The applicant faced trial in Special POCSO Case No.5 of 2023 before the Court of Special Judge, Malegaon, Nashik, for the offences punishable under Sections 354 and 354A of the Indian Penal Code and Sections 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act'). By a judgment and order dated 27 June 2024, the applicant was convicted and, in terms of Section 42 of the POCSO Act, sentenced to suffer rigorous imprisonment of five years and pay a fine of Rs.50,000/- (with default stipulations) for the offence punishable under Section 8 of the POCSO Act.

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

3. Ms Savvy Kolhekar, the learned Counsel appearing on behalf of the applicant, highlights the alleged deficiencies in the prosecution's case and argues that the learned trial Judge overlooked the significant delay in filing the FIR and the fact that the prosecution failed to prove when the alleged incident occurred and examine material witnesses, i.e., the victim's father and his friend, Pandhari. Noting the testimonies of PW-1

(the informant), PW-2 (the victim) and PW-3 (the victim's sister), the learned Counsel further contends that the prosecution evidence lacks credibility and fails to inspire confidence. Further, the learned Counsel submits that the applicant was arrested on 25 December 2022 and has been in custody for two years and two months. The applicant is willing to abide by any conditions this Court imposes if released on bail, including not to enter the jurisdiction of the concerned police station where the victim resides.

4. Ms Manisha Tidke, the learned Additional Public Prosecutor representing respondent No.1/ State, and Ms Paavani Chadha, the learned Counsel appearing for respondent No.2, opposing the applicant's request, refer to the seriousness of the charge on which the appellant has been convicted and jointly submit 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.

5. This Court has considered the rival submissions canvassed across the Bar.

6. 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.”

7. Upon a perusal of the records, it *prima facie* appears that the prosecution failed to examine the victim's father and the independent witness, Pandhari. The evidence on record, especially the testimony of PW-3, the victim's sister, who claims to be an eyewitness to the incident, does not indicate when the

alleged incident took place. The applicant is sentenced for a maximum period of five 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 already undergone imprisonment for two years and two months out of the total sentence of five years. Moreover, the appeal has been filed in 2024 and is unlikely to be heard immediately due to the pendency of older appeals. In these circumstances, a fit case is made out for suspending the applicant's sentence and his release on bail. Hence, the following order:

ORDER

(i) The sentence imposed upon the applicant by the judgment and order dated 27 June 2024 passed by the Court of Special Judge, Malegaon, Nashik, in Special POCSO Case No.5 of 2023, 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 refrain from contacting the victim or her family members in any manner whatsoever and entering the jurisdiction of the concerned Police Station where the victim resides.

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

8. The application stands disposed of accordingly.

(R.N. Laddha, J.)