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

Interim Application No.4146 of 2024

In

Criminal Appeal No.1115 of 2024

Vijayshankar @ Guddu Thakurprasad Mishra,

Aged 41 years, Occ: Service,

R/at Universal Paradise Building,

Opposite Post Office,

Nanda Patkar Road,

Vile parle East, Mumbai.

Permanent Resident of Mihnaam,

Tahsil Pachavi Tola, Thana Behara

Dist. Darbhanga, State – Bihar

(At present is in Aurangabad Prison)

... Applicant

versus

1. The State of Maharashtra

(at the instance of Vile Parle Police

Station vide C.R. No.948 of 2022)

2. ABC

Age: 39 years

Occ: -

[at the instance of Vile Parle P. Stn.

Vide C.R. No.948/2022]

... Respondents

Mr Ramprasad Gupta, for the applicant.

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

Ms Rupali Shinde, for respondent No.2 (through Legal Aid).

PSI Nikam, Vile Parle Police Station, is present.

Coram: R.N. Laddha, J.

Date: 15 January 2025.

P.C.:

By this application, the applicant seeks suspension of sentence and grant of bail pending the hearing and final disposal of the appeal.

2. The applicant/accused faced trial in Special Case No.613 of 2022. By a judgment and order dated 29 August 2024, the applicant stood convicted for the offences punishable under Sections 354 and 354A of the Indian Penal Code ('IPC'), and Sections 9(m) read with 10 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act'). The applicant was sentenced to suffer rigorous imprisonment of five years with fine of Rs.10,000/-, with default stipulations, for the offence under Section 9(m) punishable under Section 10 of POCSO Act. Since the punishment was imposed under Section 9(m) punishable under Section 10 of POCSO Act, no separate sentence was imposed on the applicant for the offence punishable under Sections 354 and 354A of the IPC.

3. Mr Ramprasad Gupta, the learned Counsel appearing on behalf of the applicant, highlighting the alleged deficiencies in the prosecution's case, submits that the prosecution evidence

fails to inspire confidence. The learned Counsel submits that the applicant has been languishing in jail for two years and three months out of the five-year sentence, and is willing to cooperate fully with the appeal proceedings, and prays for his release on bail pending the outcome of the appeal.

4. Dr Ashwini A Takalkar, the learned Additional Public Prosecutor for respondent No.1/ State and Ms Rupali Shinde, the learned Counsel for respondent No.2, opposing the request for suspension of sentence and bail, submit that the offence is serious and the evidence on record strongly supports the prosecution's case and does not warrant the grant of bail.

5. This Court has given anxious consideration to the rival submissions canvassed across the Bar and perused the record.

6. In ***Bhagwan Rama Shinde Gosai Vs State of Gujarat***¹, 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

¹ (1999) 4 SCC 421

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. 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 current post-conviction stage of the proceedings, it is essential to recognise that the applicant has already undergone imprisonment of two years and three months out of total sentence of five years. The appeal 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. Hence, the following order:

ORDER

(i) The sentence imposed upon the applicant vide judgment and order dated 29 August 2024 passed by the Additional

Sessions Judge, Borivali Division, Dindoshi, Goregaon, Mumbai, in Special Case No.613 of 2022, 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.

8. The applicant stands disposed of accordingly.

9. All parties shall act upon the authenticated copy of this order.

(R.N. Laddha, J.)