

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

Interim Application No.4864 of 2024

In

Criminal Appeal No.1329 of 2024

Abhishek Motilal @ Pappu Verma

Age: 22 yrs, Occ:service

R/o Shirgaon, Tal:Maval,

Pune-410506

(at present Yerwada Central
Prison, Pune)

... Applicant/
Org.Accused &
Appellant.

Versus

1. The State of Maharashtra
(Through Shirgaon Parandwadi
Police Station Officer,
Pune-410506.

2. XYZ (Victim)
Through Shirgaon Parandwai
Police Station, Pune-410506

... Respondents/
(Org.complainant)

Mr Shrirang Katneshwarkar, Advocate for the applicant.

Mr Yogesh Y Dabke, APP, for respondent No.1/ State.

Ms Isha Rakesh Singh h/f Mr Tejas D Kothalikar for
respondent No.2.

PSI NA Shaikh, Shirgaon-Parandwadi Police Station, Pune.

Coram: R.N. Laddha, J.

Date: 6 March 2025.

P.C.:

The applicant faced trial in Special Case No.27 of 2023 before the Court of the Additional Sessions Judge, Vadgaon Maval, Pune, for offences punishable under Sections 376 of the Indian Penal Code ('IPC'), Sections 3, 4, 5 and 6 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act'). By a judgment and order dated 30 August 2024, the applicant was convicted for the offences punishable under Sections 376 of IPC and Sections 4, and 6 of the POCSO Act. The applicant was sentenced as follows: (i) twenty years of rigorous imprisonment and a fine of Rs.10,000/- (with default stipulations) for the offence punishable under Sections 5 and 6 of the POCSO Act. No separate sentence was imposed upon the applicant for offences punishable under Sections 4 of the POCSO Act, and Section 376 IPC, as the sentence was imposed under Sections 5 and 6 of the POCSO Act.

2. The learned Counsel appearing on behalf of the applicant, highlighting the alleged deficiencies in the prosecution's case, contends that the testimony of PW-1, the victim, lacks credibility and fails to inspire confidence. Further, the prosecution failed to examine key witnesses to support its case. Learned Counsel submits that at the time of incident the age of the the applicant/ accused was 18 years. The trial Court had

grossly erred in holding that the alleged victim girl was minor on the date of the alleged incident. Learned Counsel complaints that the trial Court had misread the prosecution evidence and was influenced by several assumptions which cannot be sustained on the basis of the material on record, and this has resulted in a grave miscarriage of justice. According to the learned Counsel, the trial Court did not evaluate the evidence from a proper perspective. The allegation of the victim girl that the accused raped her is improbable. The testimony of the victim girl is contradictory in various material aspects from the evidence of the other prosecution witnesses. During the pendency of the trial, the applicant was out on bail. Meanwhile, during the pendency of the appeal, the victim has now become major. Referring to the victim's affidavit, the learned Counsel submits that the applicant and the victim have now decided to marry each other.

3. The learned Additional Public Prosecutor representing respondent No.1/ State, opposing the applicant's request and referring to the seriousness of the charge under which the applicant is convicted, 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. The learned APP submits that the school certificate was issued

on the basis of the records of the school, and its contents were duly proved through its author. The school record demonstrates that on the day of offence, the age of the victim girl was 17 years and 9 months.

4. The learned Counsel for respondent No.2/ victim submits that the respondent No.2 has no objection to the suspension of the sentence and granting of bail to the applicant. Furthermore, the applicant and the victim, who is now an adult, have decided to marry each other.

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

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. In the present case, the records indicate that at the time of the incident, the victim's was 17 years and 9 months old, while the applicant was 18 years old. During the trial proceedings, the applicant was granted bail and did not misuse the liberty granted to him. The appeal was filed in 2024 and is unlikely to be heard in the near future due to the pendency of the older appeals. In these 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 30 August 2024 passed by the Additional Sessions Judge, Vadgaon Maval, Pune, in Special Case No.27 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 keep the investigating officer informed and updated about his contact number and address.

8. The interim application stands disposed of accordingly.

(R.N. Laddha, J.)