

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

Interim Application No.5089 of 2024

in

Criminal Appeal No.480 of 2021

Vijay Nanurao Pawar

Age about 59 yrs, Indian

Inhabitant, R/at Zenda Bazar,

Jamdar Ali, Vasai, Mumbai.

(At present accused is in

Yerwada Jail.)

...Applicant

Versus

1. The State of Maharashtra

2. Xyz

(victim of mother)

Age about 52 years,

(Through Vasai Police Station)

...Respondents

Mr Jiten Dhanak, for the applicant.

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

Ms Vilasini Balasubramanian, for respondent No.2 (appointed through legal aid)

Coram: R.N.Laddha, J.

Date: 29 April 2025

P.C.:

Ms Vilasini Balasubramanian is appointed to espouse the cause of respondent No.2.

2. The applicant faced trial in Special POCSO Case No.17 of 2017 before the Court of Special Judge Vasai at Vasai, for the offences punishable under Sections 354A and 506 of the Indian Penal Code ('IPC') and Sections 8, 9(m)(n) and 10 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act'). By the judgment and order dated 6 March 2020, the applicant stood convicted for these offences and sentenced to suffer rigorous imprisonment for seven years and pay a fine of Rs.30,000/- (with default stipulations) for the offence punishable under Section 10 of the POCSO Act. No separate sentence was imposed upon the applicant for the offences punishable under Section 506 of the IPC and Section 8 of the POCSO Act.

3. Aggrieved thereby, the applicant preferred an appeal before this Court. Earlier, the applicant preferred an application bearing No.1480 of 2021, which was withdrawn on 29 July 2021. By this successive application, the applicant once again seeks suspension of the sentence and release on bail.

4. Mr Jiten Dhanak, the learned Counsel appearing on behalf of the applicant, highlights the alleged shortcomings in the prosecution's case and contends that the testimonies of the prosecution witnesses lack credibility and do not inspire confidence. He submits that the learned trial Court failed to

consider the delay in lodging the FIR. The learned Counsel submits that the applicant has already served more than five years out of the seven-year sentence. He further submits that the applicant is ready to adhere to any conditions that this Court imposes and is committed to fully cooperate with the appeal proceedings if released on bail.

5. Mr Yogesh Dabke, the learned Additional Public Prosecutor representing respondent No.1/ State, and Ms Vilasini Balasubramanian, the learned Counsel appearing for respondent No.2, jointly oppose the applicant's plea for bail and refer to the seriousness of the charge on which the applicant has been convicted. They submit that the trial Court thoroughly reviewed the evidence on record and rightly convicted the applicant. The evidence on record, particularly the testimony of the victim, strongly supports the prosecution's case and does not warrant the suspension of the sentence and grant of bail.

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

7. It is a well-settled position in law that the appellate Court can leniently consider a convict's request for suspension of the sentence in cases where the term of the sentence is fixed, except

in exceptional circumstances or where restrictions under any statute apply. If the sentence imposed cannot be suspended, the appellate Court must endeavour to adjudicate the appeal on merits, especially in cases where there is a plea for expeditious resolution. Failing to do so could jeopardise the applicant's statutory rights due to the passage of time. In situations where the appellate Court recognises that practical circumstances may hinder the prompt resolution of the appeal, it becomes essential for the Court to exercise heightened diligence in deliberating on sentence suspension. This ensures that the appeal process remains viable, meaningful, and effective. Additionally, when granting bail, the appellate Court has the discretion to impose certain conditions. A profitable reference in this regard can be made to the decision in *Bhagwan Rama Shinde Gosai v. State of Gujarat*, (1999) 4 SCC 421.

8. While this Court takes note of the submissions canvassed by the learned APP and the learned Counsel for respondent No.2 regarding the seriousness of the offence and the fact that the proceedings are at the post-conviction stage, it must also be noted that the applicant has already undergone more than five years of the seven-year sentence. Considering the applicant's long incarceration and the fact that the appeal was filed in 2021 and is unlikely to be heard in the near future due to the pendency of older appeals, this Court is inclined to suspend the

applicant's sentence and release him on bail during the pendency of the appeal. Hence, the following order:

ORDER

(i) The sentence imposed upon the applicant vide judgment and order dated 6 March 2020 passed in Special POCSO Case No.17 of 2017 by the Court of Special Judge Vasai at Vasai, stands suspended during the pendency of the appeal.

(ii) 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.

(iii) The applicant shall keep the investigating officer informed and updated about his contact number and address.

9. The interim application stands disposed of accordingly.

(R. N. Laddha, J.)