

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 5092 OF 2024

(For Suspension)

IN

CRIMINAL APPEAL NO. 386 OF 2025

Ganesh @ Siddhu Vilas Bhalearo

.... Applicant

versus

The State of Maharashtra and Anr.

.... Respondents

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INTERIM APPLICATION NO. 2224 OF 2025

(For Suspension)

IN

CRIMINAL APPEAL NO. 495 OF 2022

Sudhir Chatrabhuj Gaikwad

.... Applicant

versus

The State of Maharashtra and Anr.

.... Respondents

....

Mr.Rohan Hogle i/b. Mr.Nagesh Khedkar, Advocate for the Applicant in Interim Application No.5092 of 2024.

Mr.Konde Deshmukh i/b. Mr.Abhishek Nagode, Advocate for the Applicant/Appellant in Interim Application No.2224 of 2025. Criminal Appeal No.495 of 2022.

Mr.M. S. Sonavane, APP for Respondent No.1-State.

Ms.Pranali P. Kakade, Appointed Advocate for Respondent No.2 in Criminal Appeal No.495 of 2022.

Mr.Naganath Bhaujawale, PS, Sangavi Police Station, Pimpri Chinchvad present.

....

CORAM : R. M. JOSHI, J.

DATE : 12<sup>th</sup> NOVEMBER, 2025.

P.C.:

. These Applications are for suspension of substantive sentence and enlargement on bail of the Appellants/Applicants in connection with the judgment and order dated 2<sup>nd</sup> December 2020 passed in Special POCSO Case No.33 of 2016, whereby the Appellants/Applicants are sentenced to suffer Rigorous Imprisonment of 20 years with fine.

2. At the outset, the learned counsel for the Appellants/Applicants submits that the Trial Court has committed in error in imposing sentence of 20 years, as the amendment to the Protection of Children from Sexual Offences Act, 2012 ('POCSO' for short) with regard to the minimum sentence of 20 years came to be effected from 2019. It is his submission that, the offence has been committed prior thereto, it has fit case for suspension of sentence and enlargement of the Appellants/Applicants on bail. To support his submission he placed reliance on order of the co-ordinate Bench of

this Court dated 6<sup>th</sup> November 2023 passed in IA No.1824 of 2023 in Criminal Appeal No.1032 of 2023. On merit it is his submission that, the evidence of the victim is not reliable possibility of false implication is not ruled out. It is his submission that, it is not possible that, the victim would not complaint about the incident occurred with her immediately either to her father or even to the neighbor at whose instance ultimately report came to be lodged. It is his submission that, the neighbor at whose instance report is lodged has a reason to implicate them. It is argued that, the Appellants/Applicants have undergone 10 years of sentence and in view of there being no possibility to take up the Appeal for the final hearing in near future, they deserve enlargement on bail.

3. The learned counsel for Respondent No.2-Victim and APP opposed the Application by pointing out the seriousness and gravity of the offence. It is submitted that, the Appellants herein are friends of the father of victim. It is contended that, the father of the victim is addicted of the liquor and Appellants/Applicants used to come there for the same. It is submitted that, the victim is ravished for a period of a month which indicates seriousness of the crime.

They drew attention of the Court to the evidence on record and argued that, testimony of the victim is supported the medical evidence and hence, it is not a fit case to enlarge the Appellants/Applicants on bail.

4. At the outset, this Court would like to deal with the arguments sought to be advanced on behalf of the Appellants/Applicants about imposition of sentence of 20 years. No doubt the minimum sentence of 20 years which came to be prescribed for the offence in question is brought to statute in the year 2019, which prior to the amendment was minimum sentence of 10 years. It is however, pertinent to note that, though the minimum sentence was of 10 years then, the maximum sentence could have been upto life imprisonment. It is therefore, to be seen whether that the learned Trial Court has recorded any reason for imposing sentence of 20 years. Perusal of the judgment and more particularly paragraph No.46 thereof indicates that, the Trial Court has applied his mind to the facts of the case and instead of imposing sentence of life imprisonment not it appropriate to award sentence of 20 years rigorous imprisonment. Since, the Trail Court has recorded reason

for imposing the said sentence and it was within the power/jurisdiction of the Trial Court to impose such sentence, this Court finds no reason to accept the contentions of the learned counsel for the Appellants/Applicants at this stage. Apart from this, it is pertinent to note that, the minimum sentence for the offence in question even then was 10 years even and it can be said that, the Appellants/Applicants have undergone minimum sentence till date.

5. The period spent by the Appellant in jail would not be the sole ground for determination of the Application for the suspension of sentence and to enlarge the Appellants/Applicants on bail. The Court is required to take into consideration the nature and gravity of offence. *Prima facie* material on record indicates that there is evidence on record to show that the victim was minor at the time of occurrence of the incident. This is not a case of a love affair. Here in this case the Appellants/Applicants who were friends of the father of the victim used to go their house for the consumption of liquor and as per the testimony of the victim for a month they ravished her. In such circumstances, this Court finds no reason and justification to suspend the substantive sentence at this stage and to enlarge them on

bail.

6. Having regard to the above discussion, the Applications stands dismissed.

7. The observations made above are *prima facie* in nature and would not come in way of either side at time of hearing of Appeal finally.

8. The Appeal shall stand expedited.

(R. M. JOSHI, J.)