

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

Interim Application No.158 of 2025

In

Criminal Appeal No.38 of 2025

Namita Jitendra Tiwari

Age: 52 yrs, Occ: Housewife,

Add- Palaundha, Shiv Sagar Road,

Police Station Chenari, Rohtas

Sasaram, Chanari, Dist-Rohtas

Bihar-821104.

Presently in Yerwada jail

... Applicant

Versus

1. State of Maharashtra

Through Mira Road Police Station

2. Xyz

At the instance of Mira Road

Police Station (CR No.I-79/2014)

... Respondents

Mr SH Pasi, for the applicant.

Mr Arfan Sait, APP, for respondent No.1/ State.

Ms Savvy Kolhekar, for respondent No.2 (through Legal Aid).

PSI Sahil Salunkhe, Mira Road police station, present.

Coram: R.N.Laddha, J.

Date: 22 April 2025.

P.C.:

The applicant (accused No.2) faced trial in Special (POCSO) Case No.92 of 2014 before the Court of the Special Judge, Thane, for the offences punishable under Sections 376

read with 34 of the Indian Penal Code ('IPC') and Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act'). By the judgment and order dated 29 November 2024, the applicant was convicted for the offences punishable under Section 376 of the IPC and Sections 5 and 6 of the POCSO Act and sentenced to suffer rigorous imprisonment for ten years and pay a fine of Rs.25,000/- (with default stipulations). Aggrieved thereby, the applicant preferred an appeal before this Court and, by the present application, seeks suspension of the sentence and release on bail.

2. Mr SH Pasi, the learned Counsel appearing on behalf of the applicant, submits that the applicant, who has been residing in Bihar with her children, never lived with the victim. Even according to the prosecution, the applicant was aware of the incident only from June to July 2010, and was later sent to Bihar by accused No.1, her husband. The victim and accused No.1 engaged in a physical relationship, where accused No.1 promised to marry the victim. When the victim realised that accused No. 1 had no intention of following through on his promise, she sought revenge by falsely implicating the applicant in this crime. Further, the learned Counsel, highlighting the alleged shortcomings in the prosecution's case, contends that the testimonies of the prosecution witnesses lack credibility and

fail to inspire confidence. The prosecution did not examine the investigation officer, and the victim's age was not proved. The learned Counsel further contends that the POCSO Act came into effect only in the year 2012. However, the alleged incident involving the applicant is stated to have taken place in the year 2010, which is prior to the enactment and enforcement of the said legislation. Therefore, it is submitted that the provisions of the POCSO Act cannot be retrospectively applied to the applicant in relation to the alleged offence. The applicant has been in custody for almost six months and is ready to abide by any conditions this Court imposes if released on bail.

3. Mr Arfan Sait, the learned Additional Public Prosecutor representing respondent No.1/ State, and Ms Savvy Kolhekar, the learned Counsel appearing on behalf of respondent No.2/ victim, jointly oppose the applicant's request and refer to the seriousness of the charge on which the applicant has been convicted. They further submit that the evidence on record, particularly the testimony of the victim, strongly supports the prosecution's case and does not warrant the applicant's release on bail.

4. This Court has given anxious consideration to the rival contentions canvassed at the Bar.

5. 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.”

6. Similarly, in *Atul v. State of Madhya Pradesh*, Criminal Appeal No.579 of 2024 dated 2 February 2024, the Hon'ble Supreme Court observed as follows:

“Before parting with order, we must note here

that notwithstanding several decisions of this Court holding that when there is a fixed term sentence and especially when the appeal is not likely to be heard before completing entire period of sentence, normally suspension of sentence and bail should be granted. We find that in several deserving cases, bail is being denied. Such cases should never be required to be brought before this Court.”

7. In the present case, the applicant has been sentenced to undergo rigorous imprisonment for a maximum term of ten years in connection with an offence that allegedly took place in the year 2010. The applicant is the wife of accused No.1. The specific and limited allegation against her is that, despite being aware of her husband's physical relations with the victim, she failed to report the matter to the police authorities. It appears from the record that the applicant resided with her husband/ accused No.1 and the victim during a brief period from June to July 2010. Subsequently, she was sent back to her native place by her husband, who continued his relationship with the victim thereafter. It is not the case of the prosecution that the applicant either compelled or encouraged the victim to engage in a physical relationship with her husband. While this Court acknowledges the gravity of the offence as emphasised by the learned APP and the learned Counsel for respondent No.2, and the fact that the matter is at the post-conviction stage, it is

equally important to consider the limited and peripheral role attributed to the applicant in the alleged incident. Notably, the FIR was lodged on 21 October 2014 wherein the victim did not make any grievance against the applicant. The applicant was granted bail during the course of the trial and has adhered to the conditions imposed, without any instance of misuse of the liberty so granted. An appeal challenging the applicant's conviction was preferred in the year 2025. Considering the pendency of several older matters before the Appellate Court, it is unlikely that the said appeal will be heard and finally disposed of in the near future. Having regard to the nature of the allegations and the applicant's conduct during the trial, this Court is of the view that a case is made out for the suspension of sentence and grant of bail to the applicant during the pendency of the appeal. Hence, the following order:

ORDER

(i) The sentence imposed upon the applicant vide the judgement and order dated 29 November 2024 passed by the Special Judge, Thane, in Special POCSO Case No.92 of 2014, 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.

8. The interim application stands disposed of accordingly.

[R. N. Laddha, J.]