

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

Interim Application No.202 of 2025

in

Criminal Appeal No.45 of 2025

Bhausahab Kisanrao Mule

Age: 56 years, Occ: Contractor,

Resident of: Wadgaon Shinde,

Taluka: Haveli, Dist: Pune.

At present: Yerwada Jail, Pune.

... Applicant

versus

1. The State of Maharashtra

Through Lonikand Police Station,

Dist: Pune.

2. XYZ

Through Wadgaon Shinde,

Lonikand Police Station,

Tal: Haveli, Dist: Pune.

... Respondents

Mr Tejesh Dande, along with Ms Trushna Shah, for the applicant.

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

Coram: R.N. Laddha, J.

Date: 4 April 2025.

P.C.:

Heard Mr Tejesh Dande, the learned Counsel appearing on behalf of the applicant, and Mr Yogesh Dabke, the learned

Additional Public Prosecutor representing respondent No.1/
State.

2. The applicant faced trial in Special (POCSO) Case No.529 of 2018 before the Additional Sessions Judge, Pune, for offences punishable under Sections 376(2)(f)(n)(j)(k) and 376(3) of the Indian Penal Code ('IPC') and Sections 6 read with 5(l)(n)(p) of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act'). By the judgment and order dated 12 November 2024, the trial Court convicted the applicant and sentenced him to suffer rigorous imprisonment for twenty-five years and pay a fine of Rs.10,000/- (with default stipulations) for the offence punishable under Sections 6 read with 5(l)(n)(p) of the POCSO Act. In view of Section 42 of the POCSO Act, no separate sentence was imposed upon the applicant for the offences punishable under Sections 376(2)(f)(n)(j)(k) and 376(3) of IPC.

3. Dissatisfied, the applicant preferred an appeal before this Court and, by the present application, seeks suspension of the sentence and release on bail.

4. The learned Counsel appearing on behalf of the applicant argues that there are considerable shortcomings in the prosecution's evidence and claims that the testimonies of the

prosecution witnesses lack credibility and fail to inspire confidence. The main thrust of his arguments is that the applicant is falsely implicated due to property disputes. The victim is the applicant's daughter. There was a significant delay in lodging the FIR. The learned Counsel further submits that the applicant has served about six years out of the twenty-five-year term. The applicant is willing to abide by any conditions imposed by this Court and cooperate with the appeal proceedings if released on bail.

5. The learned Additional Public Prosecutor representing respondent No.1/State, opposes the applicant's request, citing the seriousness of the charge on which the applicant has been convicted and that the evidence on record, more particularly the testimony of the victim, strongly supports the prosecution's case. The learned APP submits that the applicant is the father of the victim and the victim was a minor at the time of the incident. The applicant's guilt has been proved beyond doubt. No contradictions or omissions impacting the root of the case were brought on record. If the applicant's sentence is suspended and he is released on bail, he could potentially endanger the victim.

6. This Court has given anxious consideration to the rival

submissions canvassed across the Bar.

7. It is a settled position in law that suspending a sentence for short-term imprisonment during the pendency of the appeal is the general norm. However, in situations where releasing the accused by suspending his sentence may pose a threat to society or give rise to significant concerns, the appellate Court may refrain from exercising its discretion in favour of the accused. In *Kiran Kumar v. State of M.P.*, (2001) 9 SCC 211, the Hon'ble Supreme Court held as follows:

“3. This Court has held in Bhagwan Rama Shinde Gosai v. State of Gujarat [(1999) 4 SCC 421 : 1999 SCC (Cri) 553] that when a person is convicted and sentenced to a short-term imprisonment the normal rule is that when his appeal is pending the sentence should be suspended and rejection is only by way of exception and be put forward for such rejection. In such case also every endeavour should be made to have the appeal posted for early hearing and disposal. If the short-term sentence is allowed to run out during the pendency of the appeal, the appeal itself will become, for all practical purposes, infructuous so far as the appellant is concerned. It does not mean that the appellate court should suspend the sentence, if its consequence would be a danger to the society or any other similar difficulties.”

8. Similarly, in *K.C. Sareen v. CBI, (2001) 6 SCC 584*, the Hon'ble Supreme Court held as follows:

“11. The legal position, therefore, is this: though the power to suspend an order of conviction, apart from the order of sentence, is not alien to Section 389(1) of the Code, its exercise should be limited to very exceptional cases. Merely because the convicted person files an appeal in challenge of the conviction the court should not suspend the operation of the order of conviction. The court has a duty to look at all aspects including the ramifications of keeping such conviction in abeyance.”

9. Upon perusing the records, the offences for which the applicant has been convicted appear serious. The victim is the daughter of the applicant. The material on record shows that the witnesses support the prosecution's case, with their testimonies remaining consistent and demonstrating the applicant's involvement in the crime. The testimony of PW-1, the victim, is on equal footing with that of an injured witness.

10. This Court is conscious and mindful that the appeal is admitted and pending for final hearing. However, it cannot be overlooked that the applicant has been found guilty and convicted by a competent criminal court. Therefore, the initial presumption of innocence in favour of the accused is no longer available to the applicant. At this stage, there appears no

infirmity in the findings of the trial Court, which convicted the applicant for the offences punishable under Sections 376(2)(f) (n)(j)(k) and 376(3) of IPC and Sections 6 read with 5(l)(n)(p) of the POCSO Act.

11. Given the above, no grounds are made out for suspending the sentence or granting bail to the applicant during the pendency of the appeal. As a result, the application stands rejected.

(R.N. Laddha, J.)