

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

**Interim Application No.442 of 2025
in
Criminal Appeal No.573 of 2023**

Avdhut @ Jayu Shantaram Rane
Age 36 years, Occ. Agriculturist,
R/o. Kunkavan Gavthanwadi,
Tal. Deogad, Dist. Sindhudurg,
(Currently lodged in Kolhapur
Central Prison)

... Applicant

versus

1. The State of Maharashtra
Through the Vijaydurg Police Station.

2. XYZ (Father of the victim)
Copy to be served through IO in
C.R. No.54/2017

... Respondents

Ms Mukta Gupta, Senior Advocate, along with Ms Nitya Gupta, and Mr Saksham Sethi i/b Kiran Varma, for the applicant.

Mr Swapnil S Pednekar, APP, for respondent No.1/ State.

Mr Saumil Deb, for respondent No.2.

Coram: R.N. Laddha, J.

Date: 23 April 2025

P.C.:

The applicant (accused No.1) faced trial in Special Case (POCSO) No.13 of 2019 before the Sessions Court,

Sindhudurg at Oras, for committing the offences punishable under Section 376, 376D, 376(2)(n), 354(A)(1)(i)(ii), and 506 read with 34 of the Indian Penal Code ('IPC') and Sections 4, 5, 6, 7, 8 and 12 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act').

2. The offence in question stems from the allegation that the applicant sexually assaulted the victim, a minor, on multiple occasions and issued threats to discourage the victim from disclosing these incidents to any third party. At trial, seven witnesses were examined by the prosecution. Accordingly, by the judgment and order dated 24 June 2022, the trial Court acquitted the applicant of the offence punishable under Section 6 of the POCSO Act and convicted him for the offences under Sections 376(2), 376-D and 506 of the IPC and Sections 4, 8 and 12 of the POCSO Act. He was sentenced as follows: (i) ten years rigorous imprisonment and a fine of Rs.1,000/- (with default stipulations) for the offence punishable under Section 376(2) of the IPC, (ii) twenty years rigorous imprisonment and a fine of Rs.500/- (with default stipulations) for the offence punishable under Section 376-D of the IPC, (iii) seven years rigorous imprisonment and a fine of Rs.1,000/- (with default stipulations) for the offence punishable under Section 4 of the POCSO Act, (iv) three years rigorous imprisonment and a fine

of Rs.600/- (with default stipulations) for the offence punishable under Section 8 of the POCSO Act, and (v) one year rigorous imprisonment and a fine of Rs.700/- (with default stipulations) for the offence punishable under Section 12 of the POCSO Act. The sentences were directed to run concurrently.

3. Dissatisfied, the applicant, along with the co-accused, preferred an appeal bearing No.697 of 2022 before this Court and filed an interim application bearing No.2254 of 2022 seeking suspension of the sentence and release on bail. Subsequently, vide interim application No.852 of 2023, the applicant sought separation of his appeal from that of the co-accused, which was allowed on 20 April 2023. The applicant's appeal was then registered as appeal No.573 of 2023. In this appeal, the applicant filed an interim application bearing No.1834 of 2023 praying for suspension of the sentence and release on bail. By an order dated 1 November 2023, the request in the interim application bearing No.1834 of 2023 was refused, and in light of this order, on the same day, the request in the interim application bearing No.2254 of 2022 was rejected *qua* the applicant. Against this background, the applicant has approached this Court by filing the present successive application, thereby renewing his request for suspension of sentence and release on bail.

4. Ms Mukta Gupta, the learned Senior Counsel appearing on behalf of the applicant, contends that there are significant gaps in the prosecution's evidence, and the testimonies of the prosecution witnesses lack credibility and fail to inspire confidence. The learned Senior Counsel submits that after recording further evidence, the accused was not afforded an opportunity to explain his defence under Section 313 of the Code of Criminal Procedure, 1973. Further, there was a significant delay in lodging the FIR, a fact overlooked by the trial Court, and the victim's pregnancy was not a result of the applicant's alleged actions. The learned Senior Counsel also submits that the applicant has been languishing in jail for approximately three years out of the twenty-year sentence. According to Ms Gupta, since the applicant was on bail during the trial, he should receive the same treatment during the pendency of the appeal. In support of her submission, the learned Senior Counsel relies upon the decision in *Maheshwar Tigga Vs State of Jharkhand*¹.

5. Mr Swapnil Pednekar, the learned Additional Public Prosecutor representing respondent No.1/ State, and Mr Saumil Deb, the learned Counsel appearing on behalf of respondent No.2, opposing the applicant's request, emphasising the

¹ (2020) 10 SCC 108

seriousness of the charge on which the applicant has been convicted, argues that the victim was a minor at the time the offence occurred. The applicant's guilt was proved beyond reasonable doubt. The evidence on record, particularly the statement of the victim and the medical evidence, strongly supports the prosecution's case and does not warrant the grant of bail.

6. This Court has given anxious consideration to the rival contentions canvassed across the Bar.

7. In *K.C. Sareen Vs CBI*², 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.”

8. In the present case, it is undisputed that the victim was a minor when the incident occurred. The testimony of the victim

² (2001) 6 SCC 584

is consistent with her statement, lending credibility to her version of events. In her deposition, she stated that the applicant lived in the vicinity of her residence. In March 2017, the applicant's son had come to her house to play. Later, when she accompanied the child back to his home, the applicant shut the door from inside, forcibly undressed her, and committed forcible sexual intercourse with her. She further testified that he threatened to kill her if she disclosed the incident to anyone, instilling fear and compelling her silence. The victim went on to state that a second incident occurred on 15 July 2017. On this occasion as well, she was assaulted by the applicant in a similar manner, this time in his bedroom, where he once again issued threats to deter her from revealing what had transpired. Additionally, her testimony reveals that while she was undergoing treatment for fever and was admitted to the Primary Health Centre for a period of three days, medical examinations conducted during her stay revealed that she was pregnant, an eventuality that brought the alleged acts of sexual assault to light. The prosecution has brought forth serious and substantial material that directly implicates the applicant in the commission of the alleged offence. It is also pertinent to note that in the applicant's previous applications filed under Section 389 of the CrPC, no grievance was raised regarding the alleged denial of an opportunity to present his defence under Section

313 CrPC following the recording of further evidence. This particular ground was not pleaded in the present application; rather, it was raised for the first time during the course of oral submissions at the hearing of this application. Apart from the applicant's continued incarceration and the belated oral submission regarding the alleged procedural lapse, there is no indication of any substantial change in the circumstances that would justify granting the relief presently sought. The material placed on record, including the consistent testimony of the victim and the surrounding circumstances, this Court is of the opinion that no case is made out for the suspension of the sentence or for the grant of bail at this stage. All the contentions raised by the learned Counsel for the applicant will have to be tested at the final hearing stage. Accordingly, this Court finds no merit in the present application and the same stands rejected.

(R.N. Laddha, J.)