

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

Interim Application No.888 of 2025

in

Criminal Appeal No.192 of 2025

1. Ashok Kittu Pujari

Age 42 years, Occ. Business,

2. Vijayadi Ashok Pujari

Age 42 years, Occ. Housewife,

Both are residing at – Raw House

No.9, Survey No.66/5/29-66/5/31,

Near Bholenath Furniture,

Katraj-Kondhwa Road,

Pune – 411 048.

... Applicants

Versus

The State of Maharashtra

... Respondent

Mr Anup Lahoti, for the applicants.

Ms Sangita E Phad, APP, for the Respondent / State.

Coram: R.N. Laddha, J.

Date: 20 March 2025

P.C.:

Heard Mr Anup Lahoti, the learned Counsel appearing on behalf of the applicants and Ms Sangita Phad, the learned Additional Public Prosecutor representing the respondent/ State.

2. The applicants faced trial in Sessions Case No.476 of 2012 before the Court of Additional Sessions Judge, Pune, for

offences punishable under Sections 366-B, 372, 373 and 342 read with 34 of the Indian Penal Code ('IPC'), and Sections 3, 4, 5, and 6 of the Immoral Traffic (Prevention) Act, 1956 ('PITA Act'). By a judgment and order dated 23 December 2024, the applicants were acquitted of the offences punishable under Sections 372 and 373 read with 34 of the IPC and Sections 3, 4, 5 and 6 of the PITA Act and convicted for the offences punishable under Sections 366-B and 342 read with 34 of the IPC. They were sentenced to suffer: (i) rigorous imprisonment of five years and a fine of Rs.2,000/- (with default stipulations) for the offence punishable under Sections 366-B read with 34 of the IPC, and (ii) rigorous imprisonment of one year and a fine of Rs.500/- (with default stipulations) for the offence punishable under Sections 342 read with 34 of the IPC. These sentences were directed to run concurrently.

3. Aggrieved and dissatisfied, the applicants preferred an appeal before this Court and, by the present application, seek relief in terms of Section 389 of the Code of Criminal Procedure, 1973 ('CrPC').

4. Mr Anup Lahoti, the learned Counsel appearing on behalf of the applicants, highlighting the alleged shortcomings in the prosecution's case, contends that the testimony of the prosecution witnesses lacks credibility and fails to inspire

confidence. He further submits that there are contradictions in the section 164 CrPC statement and the evidence of the victims, PW-7 and PW-8. Furthermore, both victims were of legal age at the time of the alleged incident, and the fact that PW-7 was a minor in terms of the PITA Act remained to be proved by the prosecution. The learned Counsel also submits that the applicants were on bail during the trial and have been in custody since 23 December 2024. The applicants are ready to comply with any conditions this Court imposes and cooperate fully with the appeal proceedings if released on bail.

5. Ms Sangita Phad, the learned Additional Public Prosecutor representing respondent No.1/ State, opposing the applicants' request, refers to the seriousness of the charge under which the applicants are convicted and submits that the evidence on record strongly supports the prosecution's case and does not warrant the applicants' release on bail.

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

7. In *Bhagwan Rama Shinde Gosai v. State of Gujarat*¹, 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

¹ (1999) 4 SCC 421

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.”

8. In the present case, the applicants are directed to undergo a maximum imprisonment of five years. The alleged offence occurred in November 2011. It appears that the age of one of the victims was not proved by the prosecution. The applicants were on bail during the trial and have been in custody for three months and 14 days. While this Court acknowledges the arguments presented by the learned APP regarding the gravity of the offence and the post-conviction stage of the proceedings,

it is necessary to appreciate that the appeal is filed in 2025 and is unlikely to be heard in the near future. Moreover, there is nothing on record to suggest that there are exceptional circumstances to justify the refusal of the relief under Section 389 CrPC. In these circumstances, the application is allowed in the following terms:

- (i) The sentence imposed upon the applicants vide judgment and order dated 23 December 2024 passed by the Additional Sessions Judge, Pune, in Sessions Case No.476 of 2012, stands suspended during the pendency of the appeal.
- (ii) The applicants shall be released on bail upon executing a PR Bond of Rs.25,000/- each and furnishing one or more sureties in the like amount.

9. The interim application stands disposed of accordingly.

(R.N. Laddha, J.)