

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

**Interim Application No. 1490 of 2025
In
Criminal Appeal (St.)No.8296 of 2025**

Shajad Ali Mustak Khan
Age: 35 yrs, Occ: Nil,
R/at R.No.65, Azad Nagar
Mohala, SP Road, Wadala (E),
Antoo Hill, Mumbai - 400 037,
(At Kalamba Central prison,
Kolhapur)

... Applicant

Versus

1. The State of Maharashtra
Through Public Prosecutor,
Bombay High Court.

2. XYZ

to be served through Wadala TT
Police Station, Mumbai.

... Respondents

Mr Vikrant A Desai, for the applicant (through legal aid).
Dr Ashwini A Takalkar, APP, for respondent No.1/ State.

**Coram: R.N. Laddha, J.
Date: 28 April 2025**

P.C.:

Heard Mr Vikrant Desai, the learned Counsel appearing
on behalf of the applicant, and Dr Ashwini Takalkar, the
learned Additional Public Prosecutor representing respondent

No.1/ State.

2. The applicant faced trial in POCSO Special Case No.1006 of 2021 before the Court of Sessions Court at Mumbai, for the offences punishable under Sections 376(2)(f), 376(3) and 506-II of the Indian Penal Code ('IPC'), and Sections 4, 6, 8 and 10 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act'). By the judgment and order dated 13 June 2024, the applicant was acquitted of the offences punishable under Sections 8 and 10 of the POCSO Act and convicted for the offences punishable under Sections 376(2)(f), 376(3) and 506-II of the IPC and Sections 4, 5(l)(n) and 6 of the POCSO Act. The applicant was sentenced as follows: (i) rigorous imprisonment for twenty years and a fine of Rs.20,000/- (with default stipulations) for the offence punishable under Section 6 of the POCSO Act, and (ii) imprisonment for two years for the offence punishable under Section 506-II of the IPC. The substantive sentences were directed to run concurrently. Further, no separate sentence was imposed under Sections 376(2)(f) and 376(3) of the IPC and Section 4 of the POCSO Act.

3. The learned Counsel appearing for the applicant contends that there are significant shortcomings in the prosecution's case, and the testimonies of the prosecution witnesses lack credibility

and fail to inspire confidence. He submits that all witnesses are interested witnesses and the medical evidence does not align with the key allegations. The learned Counsel further submits that the applicant has been languishing in jail since 4 July 2021 and is ready to adhere to any condition this Court imposes if released on bail.

4. Dr Ashwini Takalkar, the learned Additional Public Prosecutor representing the respondent No.1/ State, opposes the applicant's request by highlighting the seriousness of the charges that led to the applicant's conviction. She asserts that the victim was a minor, while the applicant, a relative, was around 35 years old at the time of the incident. The learned APP contends that the trial Court conducted a thorough and careful analysis of the evidence, rightly concluding that the applicant's guilt was proven beyond a reasonable doubt. She further points out that the defence failed to present any contradictions, omissions, or discrepancies that go to the root of the prosecution's case. Conversely, the recorded evidence, particularly the credible and consistent testimony of the victim and the applicant's cross-examination, provides a robust foundation for the conviction. Given the grave nature of the crime, the age and vulnerability of the victim, and the evidence on record, the learned APP asserts that there is no justification to suspend the applicant's sentence or release him on bail.

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

6. 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.”

7. Upon reviewing the records, it is evident that the offence for which the applicant has been sentenced to a term of rigorous imprisonment for twenty years is both serious and grave in nature. It is indisputable that the victim, referred to as PW-2, was a minor at the time of the incident, and the applicant is her relative. In her deposition, the victim stated that on 4 April 2021, while the victim was alone in her residence, the applicant entered the premises and engaged in forced sexual intercourse. The applicant also issued threats to harm the victim and her family members if she disclosed the incident to anyone. The applicant repeated forcible sexual intercourse on multiple occasions when the victim was alone.

Additionally, PW-2's testimony indicates that the actions of the applicant resulted in a pregnancy, which subsequently necessitated an abortion. The testimony of PW-2 remained unshaken during cross-examination, and it reflected both the trauma she endured and the clarity with which she recalled the sequence of events. The testimonies of PW-4 and PW-5 compellingly illustrate that the victim was pregnant and subsequently underwent an abortion at the Sion Hospital. Furthermore, the DNA report confirmed that the applicant's DNA matched that of the fetus. The learned Counsel for the applicant failed to point out from the evidence that the DNA samples were contaminated, or there were any mistakes in the sampling process, or misinterpretation of the test results.

8. The prosecution has brought forth serious and substantial material that directly implicates the applicant in the commission of the alleged offence. Sexual assault on minors, particularly when perpetrated by family members or individuals in close relational proximity, can lead to significant and enduring trauma, leaving an innocent child with lasting and irreparable psychological scars. The evidence on record, particularly the coherent testimony of the minor victim and the corroborating medical findings, does not justify the suspension of the sentence and the applicant's release on bail. 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.)