IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.2746 OF 2025
IN
CRIMINAL APPEAL (ST) NO.15106 OF 2025

Rajendra Padmakar Tayade .... Applicant
versus
The State of Maharashtra .... Respondent

.....

- Mr. Akshay Bankapur a/w Mr. Himanshu S. Gavit a/w Mr. Yogesh Ugale a/w Saurabh G. Utangale, Advocate for Applicant.
- Ms. Sangita D. Shinde, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 04th AUGUST, 2025

P.C. :

1. This is an application for suspension of sentence during pendency of the Applicant's Appeal challenging the Judgment and Order dated 28/11/2023 passed by the learned Special Judge, Nashik, in Special case (POCSO) No.50/2022.

2. The Applicant was convicted for commission of offence punishable u/s 354-A(1)(iii) r/w 354-A(2) of the Indian Penal Code and he was sentenced to suffer rigorous imprisonment for three years and to pay a fine of Rs.1,000/- and in default of

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payment of fine to suffer further rigorous imprisonment for one month. The Applicant was acquitted from the charges of commission of offence punishable u/s 12 of the Protection of Children from Sexual Offences Act, 2012.

3. The Appeal was filed after a delay of 538 days. The delay in filing the Appeal is condoned by a separate order passed in Interim Application No.2745 of 2025. Similarly, by a separate order the Appeal is admitted. The question now remains about suspending the sentence imposed on the Applicant. In this connection, there are certain important aspects which will be dealt with seriously.

4. As far as the present case is concerned, the allegations are that the Applicant used to show obscene videos to the victim and used to kiss her on her hands. The victim was admitted in the institution of the first informant. The Applicant and his wife were treating her as their adopted daughter. When this fact was told by the victim to the informant, who was the incharge Superintendent of the Welfare Home, she lodged the FIR at

Ambad Police Station vide CR No.I-138/2020. The learned Judge held that the prosecution has failed to establish that the victim was below 18 years of age at the time of the incident and therefore, the Applicant was acquitted from the charges of commission of offence punishable u/s 12 of the Protection of Children from Sexual Offences Act, 2012. However, the other offences were held to be proved.

5. Paragraph No.29 of the Judgment mentions that P.W.7 was a neighbour of the Applicant. She has admitted in the cross-examination that she never noticed that the accused had misbehaved with the victim. The Applicant was maintaining her. She further admitted that the victim had stolen Rs.500/- from the Applicant and therefore there was a quarrel between the victim and the Applicant and out of that grudge, this complaint could have been lodged.

6. Paragraph No.27 of the Judgment shows that, in the cross-examination, the victim had admitted that in the month of December 2019, she had taken Rs.500/-, which had fallen from

the shirt pocket of the Applicant. The evidence of P.W.7, the neighbour, is supported to that extent by the evidence of P.W.5. Learned Judge also disbelieved the victim's case that the Applicant used to kiss her hands. Therefore, to a certain extent the victim's story is disbelieved by the learned Judge.

7. All these issues will have to be decided at the stage of final hearing. However, the Appeal is not likely to be decided within a period of three years for which he is sentenced. Therefore, the Applicant deserves to be released on bail. I am inclined to grant bail to Applicant pending his Appeal, by suspending his sentence. However, some more features need to be addressed in this case.

8. Apart from the fact that sentence of the Applicant is required to be suspended in this case, this case brings out a wider defect in the practice followed by some Trial Courts because of which even if the conviction is recorded, the convicted accused are either not arrested or are arrested after a long period. In some cases, they do not even file the Appeal.

9. In the present case, after the conviction was recorded by the learned Judge, the learned counsel for the Applicant preferred an application at Ex.47 in the Special (POCSO) Case No.50/2022, by mentioning that the Applicant intended to file an Appeal against the Judgment and Order of conviction and sentence. The Applicant was on bail during the Trial and he was regularly remaining present before the Trial Court. A prayer was made that his sentence be suspended till the Appeal was filed. The learned Judge passed an order in the following words on 28/11/2023 :

> "Read application and say of APP.
>
> Heard APP and Adv. Shri Aher for accused. The accused is sentenced for 3 years. Therefore keeping the section 389 of Cr.P.C. in mind & since accused is on bail throught trial and he has not misused the liberty I pass following order.
>
> The substantive sentence of accused is suspended till one month on depositing fine amount & also on furnishing P.B. & S.B. each of Rs.25,000/-."

10. The copy of the application and order is not annexed to

this application. However, the learned APP showed the application and order to the Court. The copy of this order is taken on record.

11. The said order was passed on 28/11/2023 and till today nothing further had transpired. The Appeal was admitted today. The delay of 538 days in filing the Appeal was condoned today. But the Applicant was never arrested though the period for which the sentence was suspended is over long ago on 28/12/2023 itself. This is not an isolated incident. This is happening in many cases because of certain flaws in the practices followed by some Trial Courts, which need to be corrected immediately, so that all the orders passed are effective and the judicial process is given its proper respect and effect.

12. In this context, certain provisions are required to be taken into consideration. After conviction of an accused on certain grounds, the Trial Court can grant bail for a limited period. There are provisions under Code of Criminal Procedure, 1973 (Cr.P.C.) as well as under the Bharatiya Nagarik Suraksha

Sanhita, 2023 (BNSS). Since the present application was filed under Cr.P.C., I am referring to the provisions under Cr.P.C. Of course, there are corresponding provisions under BNSS as well.

13. The Trial Court under certain circumstances can grant bail even after conviction by suspending the sentence u/s 389 sub-section (3) of Cr.P.C. (corresponding to section 430 of BNSS), which reads thus:

> **389. Suspension of sentence pending the appeal; release of appellant on bail.**
>
> (1) .....
> (2) .....
> (3) Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall,—
> (i) where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or
> (ii) where the offence of which such person has been convicted is a bailable one, and he is on bail,

> order that the convicted person be released on bail, unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under sub-section (1), and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

One of the important features of this provision is that the period referred to in sub-section 3 of section 389 is mentioned as a period which is 'a sufficient time to present the Appeal and obtain orders of the Appellate Court'. The Trial Court is empowered to grant bail for that limited period only. In many cases, this follow up is not taken. There are other corresponding provisions which need to be referred to as under :

Section 89 of Cr.P.C. (corresponding section 92 of BNSS) reads thus:

> **89. Arrest on breach of bond for appearance**
>
> When any person who is bound by any bond taken under this Code to appear before a Court, does not

appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him

Section 90 of Cr.P.C. (corresponding section 93 of BNSS) reads thus :

90. Provisions of this Chapter generally applicable to summons and warrants of arrest

The provisions contained in this Chapter relating to a summons and warrants, and their issue, service and execution, shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code

Section 70 of Cr.P.C. (corresponding section 72 of BNSS) and section 72 of Cr.P.C. (corresponding section 74 of BNSS) read thus :

70. Form of warrant of arrest and duration

(1) Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer of such Court and shall bear the seal of the Court

(2) Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed

72. Warrants to whom directed

(1) A warrant of arrest shall ordinarily be directed to one or more police officers; but the Court issuing such a warrant may, if its immediate execution is necessary and no police officer is immediately available, direct it to any other person or persons, and such person or persons shall execute the same.

(2) When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more of them

14. Thus, the Cr.P.C. and BNSS have exhaustive provisions for ensuring the presence of the accused including the convicted accused so that the orders passed by the Trial Courts are effective. In the present case, as can be seen the Appeal was filed after a delay of 538 days. It was a long period. Till then, no steps were taken either by the Trial Court or by the Police Officers in committing the Applicant to the prison so that he served out the sentence imposed on him. This is happening in many cases, which needs to be avoided. Therefore, the Trial Courts will have

to follow a disciplined procedure so that this is not repeated and the order of conviction and sentence passed by the Trial Court could be given effect to.

15. In such a situation, when an order is passed u/s 389 (3) of Cr.P.C. (corresponding section 430 of BNSS), the Trial Courts shall place the application on a particular date, after the period for which the sentence is suspended in a case gets over, for compliance. The Trial Courts shall specify that the bond shall be executed for his appearance on that particular date. The application u/s 389 of Cr.P.C. (corresponding section 430 of BNSS) shall be placed on that date for compliance and unless the Applicant in such case produces, the order of the Appellate Court suspending the sentence for a further period, the Trial Court shall take steps to issue conviction warrant for execution of sentence u/s 418 of Cr.P.C. (corresponding section 458 of BNSS); unless, the Applicant shows sufficient reasons for extending that period for a reasonably sufficient time. Section 418 of Cr.P.C. reads thus:

418. Execution of sentence of imprisonment.

(1) Where the accused is sentenced to imprisonment for life or to imprisonment for a term in cases other than those provided for by section 413, the Court passing the sentence shall forthwith forward a warrant to the jail or other place in which he is, or is to be, confined, and, unless the accused is already confined in such jail or other place, shall forward him to such jail or other place, with the warrant:

Provided that where the accused is sentenced to imprisonment till the rising of the Court, it shall not be necessary to prepare or forward a warrant to a jail and the accused may be confined in such place as the Court may direct.

(2) Where the accused is not present in Court when he is sentenced to such imprisonment as is mentioned in sub-section (1), the Court shall issue a warrant for his arrest for the purpose of forwarding him to the jail or other place in which he is to be confined; and in such case, the sentence shall commence on the date of his arrest.

16. If the Applicant is not present before the Court, then

the Trial Court can take recourse to section 89 of Cr.P.C. (corresponding section 92 of BNSS) by issuing warrant for breach of the bond. This procedure will ensure that the orders passed granting bail post conviction for a limited period are not misused by the convicted accused unless the sentence is suspended by the Appellate Court. All these practices and procedure can be based on the above provisions of Cr.P.C. and the corresponding provisions from BNSS, which shall be followed by the Trial Courts. Even the investigating agency has a role to play. It is their duty to see that the convicted accused undergoes his sentence. The investigation has to be taken to its ultimate logical end.

17. Hence, the following order :

ORDER

(i) The sentence imposed on the Applicant by the learned Special Judge, Nashik, in Special case (POCSO) No.50/2022, vide the Judgment and Order dated 28/11/2023, is suspended and the Applicant is granted bail pending his Appeal on his furnishing P.R. Bond in the sum of Rs..25,000/-

(Rupees Twenty Five Thousand only), with one or two sureties in the like amount.

(ii) The copy of this order shall be circulated to all the Principal District and Sessions Judges so that it can be further circulated to the Additional Sessions Judges and all the Judicial Magistrates First Class within the jurisdiction of this Court.

(iii) Registry to take steps in that behalf.

(iv) The Principal District and Sessions Judges shall ensure that the orders passed u/s 389 of Cr.P.C. (corresponding section 430 of BNSS) are not misused in any manner.

(v) It is clarified that the investigating agency also has a role to play. If the temporary period for which the bail is granted u/s 389 of Cr.P.C. is over, then the investigating agency shall approach the Trial Court to point out this fact. This would be part of their duty as well.

(vi) The application is disposed of.

(SARANG V. KOTWAL, J.)