



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION NO.846 OF 2024

IN

CRIMINAL APPEAL NO.485 OF 2024

(Shero Boralal Kesiya Vs. State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. R.M. Patwardhan, Advocate for the appellant.
Mr. V.A. Thakare, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- JANUARY 30, 2025.

By this application, the appellant is seeking suspension of sentence and releasing her on bail.

2. The appellant was prosecuted of the offence punishable under Sections 344, 366-A, 370-A read with Section 34 of the Indian Penal Code and under Sections 3, 4, 5, 6 and 9 of the Immoral Traffic (Prevention) Act, 1956 (for short PITA Act) and under Section 4 of the Protection of Children from Sexual Offences Act, 2012.

3. Learned Counsel for the appellant submitted that after recording the evidence, the Special Judge has convicted the present appellant, who is a lady, of the offence punishable under Section 4 of the POCSO Act and sentenced her to suffer rigorous imprisonment for 20 years. He submitted that the application of Section 4 of the POCSO Act against the present appellant itself is

erroneous and wrong. As far as the conviction under Section 344, 366A of the IPC and under Sections 3, 4, 5, 6 and 9 of the PITA Act is concerned which is limited period punishment. He also invited my attention towards the evidence of the victim and submitted that the allegation of the victim is not substantiated by any material to show that either the present appellant has called her from the other co-accused and there were some customers and she was induced for the prostitution. He submitted that the Investigating Officer has not investigated on this aspect and there is absolutely no material to show that she had been to the house of the present applicant and there were two customers wherein she was induced for the prostitution. He submitted that the appellant has every chance of success in the present appeal. In view of that, the execution of the sentence be suspended and the appellant be released on bail.

4. Learned APP strongly opposed the application and submitted that the involvement of the present applicant is in a serious offence of PITA Act. If she is released on bail by suspending the sentence, she would involve in similar type of the activities. Hence, the application deserves to be rejected.

5. I have heard learned Counsel for both the sides. Perused the impugned judgment from which it reveals that the maximum punishment of 20 years is imposed by the Special Court against the present

appellant holding her guilty of the offence punishable under Section 4 of the POCSO Act. As far as the other offences are concerned which are under Section 344 and 366A of the IPC, the punishment is of a limited period and the offence under the PITA Act for which also the punishment imposed is of a limited period. From the impugned judgment he pointed out that he has many arguable points in the present appeal. Admittedly, at this stage, the re-appreciation of the evidence is not permissible. What is to be looked into is whether the appellant is succeeded in showing that he has every chance of success in the present appeal.

6. Considering the submissions made by the learned Counsel, he has made out a case for suspension of sentence and releasing her on bail. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass following order :

(i) The application is allowed.

(ii) The execution of the sentence vide order dated 07/08/2024 passed by the Extra Joint Additional Sessions Judge (Special Judge, POCSO Court), Nagpur in Special Cri (Child) Case No.269/2016 is hereby suspended till final disposal of the appeal.

(iii) The appellant - Shero Boralal Kesiya be released on bail on executing P.R. Bond in

the sum of Rs.25,000/- (Rs. Twenty five thousand) with one surety, in the like amount.

(iv) The appellant shall attend the Court of Extra Joint Additional Sessions Judge (Special Judge, POCSO Court), Nagpur on 5th day of every month, till disposal of the appeal.

(v) The appellant shall furnish her detailed address along with address proof before the Extra Joint Additional Sessions Judge (Special Judge, POCSO Court), Nagpur along with the names of her two relatives and their address with address proof.

7. The application stands disposed of.

CRIMINAL APPEAL NO.485 OF 2024

Heard.

2. The appeal is already admitted and the R. & P. is already received.

3. Place the appeal before the Court after preparation of the paper book for final disposal.

(URMILA JOSHI-PHALKE, J.)