

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 4674 OF 2024
IN
CRIMINAL APPEAL NO. 1198 OF 2024

Asif Mohammad Shaikh ...Applicant

IN THE MATTER BETWEEN

Asif Mohammad Shaikh ...Appellant

Versus

State of Maharashtra & Anr ...Respondents

Mr Wasim Ansari, with Shivang Shetty & Shan Illahi, for the
Applicant/Appellant.

Mr RM Pethe, APP, for Respondent No. 1-State.

Ms Jahnavi Sunil Karnik, for Respondent No. 2.

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CORAM: R. M. JOSHI, J.

DATED: 9TH JANUARY 2026

PC:-

1. This is application is for suspension of sentence and enlargement of bail in connection of Judgment and Order dated 3rd October 2024 passed in POCSO Special Case No. 647 of 2015, whereby the Appellant is convicted and sentence to suffer imprisonment for 10 years with fine.

2. Learned counsel for the Appellant submits during the course of the trial, the Appellant was on bail. According to him, the Appellant has reasonable case for success in the Appeal. He drew attention of the Court to the evidence on record which, according

to him, indicates that there is absolutely no medical evidence in order to support the allegation of the act of commission of unnatural sex by the Appellant-Accused with the victim. It is his submission that having regard to the nature of allegation it is practically impossible that there would be no medical evidence indicating happening of such incident.

3. The application is resisted by the learned APP and the counsel for Respondent No. 2, Victim. The counsel took this Court through the evidence of Dr. Jain which, according to them, indicate about the possibility of there being injury marks if there is no resistance to the act committed against the victim. It is submitted that there is other reason for false implication of the Appellant in this crime. Reference is also made to the evidence on record which indicates that there are witnesses who have seen the victim being found in the house of the accused.

4. In order to seek enlargement on bail with suspension of sentence, the Appellant to make out a reasonable case for success in the Appeal. Here in this case, the Appellant has been convicted for the offence punishable under Section 377 of the IPC for committing unnatural sexual act with the victim. Prima facie perusal of medical record indicates that except of an abrasion on the wrist, there was no other injury on the person of the victim. Though the learned APP and counsel for Respondent No. 2 be justified in making submission on the basis of the evidence of Dr Jain, to indicate said injury to wrist. However, this Court *prima facie* finds substance in the submissions of the counsel for

Appellant that there would be some injury caused to the victim if the was subjected to unnatural sex.

5. Having regard to these facts, it can be said that the Appellant as a reasonable chance of success in the Appeal. He has no criminal history behind him. The Appeal is not likely to be heard in short period of time. The Appellant is not likely to flee from Justice.

ORDER

- (a) The Interim Application stands allowed.
 - (b) The substantive sentence imposed against the Appellant by the Judgment and Order dated 3rd October 2024 passed in POCSO Special Case No. 647 of 2015 stands suspended till the decision of the Appeal.
 - (c) The Appellant be enlarged on bail on furnishing PR Bond of Rs. 15,000/- (Rupees Fifteen Thousand) with one surety in the like amount.
 - (d) The Appellant not to contact the victim or his family members in any manner whatsoever.
6. In view of the above, Interim Application No.4674 of 2024 stands disposed of.

7. It is clarified that the above observations are made on prima facie consideration of the material on record and the same shall not bind the parties during the final hearing of the Appeal.

(R. M. JOSHI, J.)