

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**CRIMINAL MISC.APPLICATION (FOR SUSPENSION OF SENTENCE) NO. 1
of 2023**

In R/CRIMINAL APPEAL NO. 201 of 2023

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RAVI HARESHBHAI PATNI

Versus

STATE OF GUJARAT

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Appearance:

for the PETITIONER(s) No.

MR BHAVIK R SAMANI(8339) for the PETITIONER(s) No.

MR. TIRTHRAJ PANDYA, APP for the RESPONDENT(s) No.

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CORAM:HONOURABLE MR. JUSTICE A.Y. KOGJE

Date : 28/02/2023

IA ORDER

[1] The Appeal is admitted by order dated 30-01-2023.

[2] Present application is filed by the applicant for suspension of sentence, wherein the applicant has been convicted vide judgment and order dated 14.12.2022 by the Additional Sessions Judge and Special Judge (POCSO), Gandhinagar in Special (POCSO) Case No.63 of 2018 for the offence punishable under Section-363, 366, 376 of the Indian Penal Code and under Section 4 and 6 of the POCSO Act.

[3] Special case has arisen out of the FIR registered as C.R. No.I-188 of 2018 with Sector-7 Police Station, Gandhinagar, wherein the offence was registered under Section-363 and 366 of the Indian Penal Code.

During the course of investigation, Section-376 of the Indian Penal Code and Section 4 and 6 of the POCSO Act were added.

[4] Learned advocate for the applicant submitted that the matter was of love affair between the applicant, who was aged approximately 21 years, whereas the prosecutorix was also aged 17 years, 2 months and 23 days as on the date of the offence.

[5] Learned advocate for the applicant submitted that during the course of the trial, the applicant was on regular bail, upon conviction has continued to be in custody since 14-12-2022. It is submitted that the applicant is young person and that the Appeal is likely to consume sometime and hence, the applicant be enlarged on permanent bail by suspending the sentence.

[6] Learned Additional Public Prosecutor has opposed the grant of application submitted that the ingredients of the offence are made out and based on cogent evidence, conviction has been recorded.

[7] Heard learned advocates for the parties and perused the documents placed on record, it appears that the applicant is today aged 23 years and the Appeal of the applicant is already admitted.

[8] Perusal of the evidence of the prosecutorix indicates to the element of love affair at the relevant time and at that time, the applicant himself was aged 21 years approximately and the prosecutorix was aged 17 years. Evidence also indicates the manner and method, in which the applicant and the prosecutorix had met and had virtually resided as husband and wife, till they were apprehended. The applicant has no criminal history and considering the decision of Apex Court in case of **Bhagwan Rama**

Shinde Gosai v/s. State of Gujarat, reported in **(1999) 4 SCC 421**, this Court is of the considered opinion that the present application requires consideration and the prayers in term of bail is *allowed*.

[9] The sentence imposed vide judgment and order dated 14.12.2022 by the Additional Sessions Judge and Special Judge (POCSO), Gandhinagar in Special (POCSO) Case No.63 of 2018, is hereby suspended pending hearing and final disposal of the Criminal Appeal.

[10] The applicant shall be released on bail by executing a fresh bond of Rs. 10,000/- (Rupees Ten Thousand Only) with one surety of the like amount to the satisfaction of the trial Court, on the following conditions that:-

- “(a) he shall not take undue advantage of liberty or misuse liberty;
- (b) he shall not leave India without prior permission of this Court;
- (c) he shall furnish the present address of his residence to the Court concerned at the time of execution of the bond and shall not change the residence without the prior permission of this Court.
- (d) he shall proceed with the Criminal Appeal as and when it may be listed.”

[11] Rule is made absolute to the aforesaid extent. Direct service is permitted.

PARESH SOMPURA

(A.Y. KOGJE, J)