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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CRIMINAL APPELLATE JURISDICTION

CRI-INTERIM APPLICATION NO. 186 OF 2026

IN

CR. APPEAL NO. 2 OF 2025

Dinesh Parshu Rathod ...Applicant.

Versus

The State Of Maharashtra And Another ...Respondents.

WITH

CRI-INTERIM APPLICATION NO. 89 OF 2026

IN

CR. APPEAL NO. 14 OF 2025

Chetan Ram Rathod ...Applicant.

Versus

The State Of Maharashtra And Others ...Respondents.

*Adv. Mahesh Vaswani a/w adv.Shreya Tiwari a/w Adv. Bhagyashri Mangle and
Adv. Ketan Patil for the Applicant in IA/89/2025.
Adv. Priyal Sarda a/w Adv. Onkar Bajaj for Appellant in APPEAL/2/2025.
Adv. B. R. Mangale for Appellant in APPEAL/14/2025.
Adv. Tanvi Tapkire for Respondent No.2 (Appointed through Legal Aid).
Dr. Ashvini A Takalkar, APP for Respondent-State.
Mr. Vishnu Gaikwad (API) Vijapur Naka Police Station present in court.*

Coram : Sharmila U. Deshmukh &
Neeraj P. Dhote, JJ.

Reserved on : 17th September, 2026
Pronounced on : 23rd September, 2026

FINAL ORDER : (PER NEERAJ P. DHOTE J.)

1. These are the Interim Applications by convict No. 2 Dinesh Parshu Rathod (Tiktok King) and convict No. 3 Chetan Ram Rathod for

suspension of sentence awarded by the learned Special Judge, Solapur in Special Case No. 275 of 2020 by Judgment and Order dated 5th November 2024. The operative order of the Judgment is reproduced below:

1. *Accused No.1 Rohit Sham Rathod, No. 2 Dinesh Parshu Rathod (Ticktock King) and No. 3 Chetan Ram Rathod are found guilty and hereby convicted under section 235 (2) of the Code of Criminal Procedure, for the offences PUS 376 (2) (n), 376 (3) and 506 of the I.P.C and U/s.3 PUS 4 and U/s.5 PUS 6 of POCSO Act.*
2. *Accused No.1 Rohit Sham Rathod, No. 2 Dinesh Parshu Rathod (Ticktock King) and No. 3 Chetan Ram Rathod are hereby sentenced to suffer Rigorous Imprisonment for Life which shall mean imprisonment for the remainder of their natural life for the offence U/s.3 PUS 4 of Protection of Children from Sexual Offences Act, 2012 and liable to pay fine of Rs.10,000/- each, in default of payment of fine, to suffer further Rigorous Imprisonment for two months each.*
3. *Accused No.1 Rohit Sham Rathod, No. 2 Dinesh Parshu Rathod (Ticktock King) and No. 3 Chetan Ram Rathod are hereby sentenced to suffer Rigorous Imprisonment for Life which shall mean imprisonment for the remainder of their natural life for the offence U/s.5 (g) PUS 6 of Protection of Children from Sexual Offences Act, 2012 and liable to pay fine of Rs.10,000/-each, in default of payment of fine, to suffer further Rigorous Imprisonment for two months each.*
4. *Accused No.1 Rohit Sham Rathod, No. 2 Dinesh Parshu Rathod (Ticktock King) and No. 3 Chetan Ram Rathod are hereby convicted for offence PUS 506 of IPC and sentenced to suffer Rigorous Imprisonment for Two Years and liable to pay fine of Rs.1,000/- each, in default of payment of fine, to suffer further Rigorous Imprisonment for two months each.*
5. *All the above sentence shall run concurrently.*
6. *In view of Section 42 of POCSO Act, no separate*

sentence is awarded for offences PUS 376 (2)(n), 376 (3) and 376 (DA) of the Indian Penal Code.

7. Accused No.1 Rohit Sham Rathod, No. 2 Dinesh Parshu Rathod (Ticktock King) and No. 3 Chetan Ram Rathod are acquitted of the offence PUS 3 (1)(w)(i) and 3 (2)(va) of the SC and ST (Prevention of Atrocities) Act.

8. Accused No.1 Rohit Sham Rathod and No. 3 Chetan Ram Rathod are in jail from 12/03/2020 and No. 2 Dinesh Parshu Rathod (Ticktock King) is in jail from 17/02/2020. Therefore, set-off for the said period be given to them as per Section 428 of Cr.P.C.

9. " "

10. " "

11. " "

12. " "

13. " "

14. " "

2. It is the prosecution's case that, the victim who at the relevant time was the child aged about 15 years and 2 months was subjected to forcible sexual intercourse by different persons at different times between September 2019 and 11th February 2020. As against the present crime is concerned, it is the prosecution's case that, all the three convicts went to the college where the victim was studying and took her in front of the Samruddhi Mangal Karyalay which was ahead of D-Mart by the car. She was raped forcefully and thereafter she was dropped at

one place by threatening that, she should come again otherwise she would be killed. When on 11th February 2020, the victim was seen crying at the Maruti temple by one person, the said person informed the police and the police took the victim to the police station. The victim's mother was informed. The victim narrated the various incidences of forcible rape on her by various persons and narrated the incident in question. For the incident in question, the crime came to be registered against the Applicants and convict No. 1 for the offences punishable under Section 376(2)(n), 376(3) and 506 of Indian Penal Code, 1860 (for short 'IPC'), for the offences punishable under Section 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO') and under Section 3(1)(w)(i) and Section 3(2)(v)(a) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'SCST Act').

3. After investigation, the charge-sheet came to be filed and charge for the offences punishable under the aforesaid sections came to be framed against the Applicants and convict No. 1. The prosecution led the evidence and considering the evidence on record, the learned trial Court convicted and sentenced the Applicants and convict No. 1.

4. Heard the learned counsels for the Applicants, learned APP for the prosecution and learned counsel for the victim.

(a) It is submitted by learned counsel for the Applicant in Interim

Application No. 186 of 2026 that, the evidence on record goes to show that the Applicant was not known to the victim prior to the date of incident. It has come in the evidence of the victim that, the Applicant was not the auto driver. There are material improvements/omissions in the testimony of the victim. The Test Identification Parade (TIP) was conducted in flagrant violation of the rules/guidelines. The identity of the Applicant as the person who committed rape is not established. The place of offence was not proved. The victim did not disclose the incident immediately to anybody. Before the medical examination, the victim narrated all the incidents between September 2019 and December 2019 and the offence in question was of 6th January, 2020. The Applicant is behind bars for a period of about 6 years and 7 months and he be released on bail by suspending the sentence during pendency of the Appeal.

(b) It is submitted by learned counsel for the Applicant in Interim Application No. 89 of 2026 that, the Applicant was not known to the victim. The victim in her evidence nowhere deposed that, the Applicant had penetrative sexual assault with her. The role attributed to the Applicant was that, he was guarding the place of incident. The memo of the TIP was prepared after 7 days, which creates a serious doubt about the process of TIP. There are vital improvements/omissions in the testimony of the victim, which makes her testimony unbelievable. The

history given to the medical officer was of the incidences from September 2019 to December 2019. The evidence on record do not establish the charge against the Applicant and he be released on bail by suspending his sentence during pendency of the Appeal. The Applicant is behind bars for a period of more than 6 years.

5. It is submitted by learned APP and the learned counsel for the victim that, the prosecution proved that, the victim was the child below the age of 16 years. The date of birth of the victim was proved by examining the witness from the office of Municipal Council where her birth record was maintained. The evidence of the victim goes to show that, prior to the incident she knew the Applicants. The victim identified the Applicants in the Court and also in the TIP. The prosecution proved the foundational facts of the case and the presumption under Section 29 and 30 of the POCSO comes into play. The Applicants failed to rebut the presumption. The Explanation to Section 5(g) of the POCSO would bring the Applicant in Interim Application No. 89 of 2026 within the ambit of the charge for the offence under Section 5 of POCSO and punishable under Section 6 of POCSO. The evidence of the victim was natural and she had no reason to falsely implicate the Applicants. There is sufficient material in support of the charge and the learned trial Court has rightly convicted and sentenced the Applicants and the Applications be rejected.

6. Both the sides took us through the relevant evidence on record, particularly the evidence of the victim who is examined as PW-2. In her substantive evidence before the learned trial Court, she deposed of the incident of sexual assault by the convicts in the case at hand. The relevant part of her deposition is reproduced below:

"11} After 1-2 days, Rohit, ticktock king and Chetan came to my college by car. Ticktock king and Chetan were the friends of Rohit. At that time, college was over. The car was silver coloured. They took me to the road in front of Smruddhi Mangal Karyalaya which is ahead to D Mart by that car. Rohit was driving that car. Ticktock king was sitting near to Rohit on front seat. I was sitting on the back side. Chetan sat near me on back side seat. Ticktock king is also known by the name of Dinesh. Firstly, Rohit established forcibly sexual intercourse with me in the same car. Ticktock king and Chetan were out of car and keeping watch. Then, ticktock king established forcibly sexual intercourse with me in the same car. At that time Chetan and Rohit were out of car and keeping watch. When I refused they gagged my mouth. They used condom while causing forcibly sexual intercourse with me. They all threatened me in terms not to disclose incident anyone otherwise they will not live me. They dropped me at saat rasta by the same car. While returning, Chetan sat near me. He was touching my whole body. He was moving his hand from my body. He was attempting to kiss me. I was attempting to shaken but he was not listening. They also threatened me that I should come again otherwise they will kill myself and my family members."

7. The learned counsel for the Applicants would emphasise that the cross-examination of the victim shows that, prior to the incident, she was not knowing the Applicants. The evidence of the victim shows that,

at the time of recording her evidence, she identified the Applicants. The said identification has come in paragraph No. 61 of her evidence. Her evidence shows that, the incident was of broad day light. The identification of the Applicants before the learned trial Court is corroborated by the identification in the TIP. The learned trial Court made the following observations in respect of the evidence of TIP:

“Test Identification Parade :

118. Evidence of PW11 Suvarna, Nayab Tahsildar and PW-12 Pundlik Kashid is about the test identification parade of accused No.1 Rohit Sham Rathod, No.2 Dinesh Parshu Rthod (Ticktock King) and No. 3 Chetan Ram Rathod. Before this incident, accused No.2 Dinesh is having prior acquaintance with the victim and he was stalking the victim continuously. Accused No. 1 Rohit is having prior acquaintance with the victim as, he is carrying the victim in aforesaid car and in other car also (in SP.C no. 273/2020) prior to this incident. Accused No. 3 Chetan was accompanied with accused Nos. 1 and 2 at the time of incident. Accused No. 1 to 3 took the victim in car in broad day light and committed forceful sexual intercourse with the victim on the spot of incident. Therefore, the victim and accused No.1 to 3 have spent sufficient time to have prior and subsequent acquaintance. It is not the case based on circumstantial evidence. It is not the case of the accused no. 1 to 3 that at the time of incident, there was no broad day light and victim was unable to see them. In spite of that identification parade of the accused No.1 to 3 was taken, during identification parade and dock identification in Court, the victim has identified accused No.1 to 3. In such circumstances, Test Identification is not necessary when the accused No.1 to 3 is well known to the witness. If the witness is already familiar with the accused No.1 to 3, there may be no need for a formal identification

parade. It's worth noting that Test Identification Parades are not always essential and their necessity can vary based on the circumstances of the case....."

8. It is the settled position under the law that, the Appellate Court is not expected to re-appreciate the evidence at the stage of considering the application for suspension of sentence. The legal position in that regard is reiterated in **Aasif alias Pasha vs. State of U.P. and Others; [2025 SCC OnLine SC 1644]** and **Dhan Jee Pandey vs. The State of Bihar and Another; [2026 SCC OnLine SC 581]**. What is required to be seen at this stage is as to whether the convicts have fair chances of acquittal. The parameters governing the suspension of sentence post-conviction are qualitatively distinct from those applicable at the stage of pre-trial bail. Upon conviction, the presumption of innocence stands displaced by a judicial determination of guilt and the appellate Court is required to exercise its jurisdiction under Section 389 of the Cr.P.C. with due circumspection and restraint.

9. The learned counsel for the Applicant in Application No. 89 of 2026 relied on the Judgments in **Sunil Kumar vs. Vipin Kumar and Others; [(2014) 8 SCC 868]** and **Kashmira Singh vs. State of Punjab; [(1977) 4 SCC 291]**. In **Sunil Kumar** (*supra*), the Appellant who was studying in the college happened to be at the Shikarpur crossing when convicted Respondent Nos. 2 and 3 dragged him into their house and began to assault. Hearing the cries, the Appellant's father and brother

arrived at the scene to his rescue. In the scuffle which ensued, both the father and the brother of the Appellant got injured which led to the consequential death of the Appellant's brother. The charge-sheet was submitted for the offences punishable under Section 302, 307 read with 34 of IPC and for the offence punishable under Section 4 read with 25 of the Arms Act. The High Court by using the discretionary powers under Section 389 of Cr.P.C. granted bail and they were on bail on earlier occasion and they did not misuse the liberty. The order of granting bail was not interfered with and the Appeal was dismissed. In **Kashmira Singh** (*supra*), the Appellant was convicted for the offence punishable under Section 323 of IPC and was acquitted for the offence punishable under Section 302 of IPC. In the Appeal preferred by the State against acquittal, the High Court set aside the order of acquittal and convicted the Appellant for the offence punishable under Section 302 and sentenced him to suffer imprisonment for life. The Petition for Special Leave to Appeal was filed and the Special Leave was granted. On finding that the Appellant was having *prima facie* good case to consider and the Special Leave to Appeal was granted, the prayer for bail was granted.

10. It is clear that the facts of the aforesaid cases and the facts of the case at hand are different. The conviction is for the offence of rape and for the offence punishable under the POCSO Act. The prosecution led the evidence to prove that the victim was child at the time of incident by

proving her date of birth by bringing on record her birth certificate. Section 29 and Section 30 of the POCSO provides for presumption. The Explanation to Section 5(g) of the POCSO, which is in respect of aggravated penetrative sexual assault and in respect of gang penetrative sexual assault on a child, provides that *"when a child is subjected to sexual assault by one or more persons of a group in furtherance of their common intention, each of such persons shall be deemed to have committed gang penetrative sexual assault within the meaning of this clause and each of such person shall be liable for that act in the same manner as if it were done by him alone; or."* In the light of the said provisions under Section 5(g) of the POCSO, the submission of the learned counsels for the Applicant in Interim Application No. 89 of 2026 that the role attributed to the Applicant was that he was guarding the place of incident will not be of any assistance.

11. From the evidence on record, it is seen that, *prima facie*, the prosecution has established the foundational facts of the incident in question by examining the victim. The medical evidence in the nature of testimony of PW-8 Dr. Savitri R. Nandimath indicates that, on examination of the victim on 12.02.2020, she found that, hymen was torn, there were multiple tears, injury present, edges were irregular, bleeding absent, oedme absent. The learned trial Court, on appreciating the evidence on record and by considering the relevant provisions of IPC

and POCSO, observed that *"From the oral and documentary evidence, it is clear that as per Section 376 (2)(n), 376(3) of Indian Penal Code and under Section 3 PUS 4, U/s. 5(g) PUS 6 of POCSO Act, the prosecution has proved that the accused No. 1 to 3 have committed gang penetrative sexual assault repeatedly/one after another with the victim, who is a child within the meaning of Section 2(d) of POCSO Act. The accused No. 1 to 3 have threatened the victim and thereby committed offence PUS 506 of IPC. Thus, the accused No. 1 to 3 are held guilty for aforesaid offence. Here, I take pause to hear accused No. 1 to 3 on the point of sentence."*

12. Considering the nature of the proved offence, the punishment imposed and in the light of the aforesaid discussion, in our considered view, this is not a fit case to exercise the powers of suspension of sentence and hence, the following order:

ORDER

Interim Application No. 186 of 2026 in Criminal Appeal No. 2 of 2025 and Interim Application No. 89 of 2026 in Criminal Appeal No.14 of 2025 are dismissed.

[Neeraj P. Dhote, J.]

[Sharmila U. Deshmukh, J.]