



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 536 OF 2025
IN
CRIMINAL APPEAL NO. 125 OF 2025

Santosh Anant Mohite Alias Sonya Dada ..Applicant
Versus
The State of Maharashtra and Anr ...Respondents

Mr. Bhalchandra Jadhav, i/b Amrish Salunke, for the Applicant.
Mr. D. J. Haldankar, APP, for Respondent No.1-State.
Adv Rachita Padwal, (Appointed Advocate), for Respondent No.2.

CORAM: N. J. JAMADAR, J.
HEARD ON : 10th SEPTEMBER 2026
PRONOUNCED ON : 17th SEPTEMBER 2026

ORDER:

1. This is an Application for suspension of sentence and to enlarge the Applicant on bail during the pendency of the Appeal.
2. In POSCO Special Case No. 68 of 2017, the Applicant came to be prosecuted for the offences punishable under Section 376 (2) of the Indian Penal Code, 1860 (“the Penal Code, 1860”) and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (“POCSO Act, 2012”), for having subjected a girl child, then 8 years of age, to aggravated penetrative sexual assault.

3. By a judgment and order dated 10th December 2024, the learned Civil Judge, Greater Mumbai was persuaded to convict the Applicant for an offence punishable under Section 376 (3) of the Penal Code and Section 6 of the POCSO Act, 2012 and sentence him to suffer Rigorous Imprisonment for a term of 10 years and pay fine of Rs. 5000/- with default stipulation for the offence punishable under Section 6 of the POCSO Act, 2012. In view of the provisions contained in Section 42 of the POCSO Act, 2012 no separate sentence was imposed for the offence punishable under Section 376 (3) of the Penal Code.

4. Being aggrieved, the Applicant is in Appeal.

5. I have heard Mr. Bhalchandra Jadhav, the learned Counsel for the Applicant, Mr. D. J. Haldankar, the learned APP for Respondent No.1-State (R1) and Ms. Rachita Padwal, the learned Counsel appointed to espouse the cause of the victim (R2), at some length.

6. Mr. Jadhav, the learned Counsel for the Applicant, submitted that no case of penetrative sexual assault has been made out. If a case of penetrative sexual assault is not made out, then the Applicant, who has undergone the sentence of almost four years, deserves to be enlarged on bail.

7. The thrust of the submission of Mr. Jadhav was that a critical omission has been proved in the cross-examination of victim in regard to the nature of the assault. In her statement before the learned

Magistrate recorded under Section 164 of the Code of Criminal Procedure, 1973, the victim did not state that the Applicant had inserted his finger in her anus. Instead, the victim had stated that after removing her innerwear, the Applicant had pressed her anus. In addition, Mr. Jadhav would urge the medico-legal examination report does not indicate that there was any penetration. Medical Officer did not record that there was injury or rupture to the organ of the victim. Therefore, Mr. Jadhav would urge, at best, a case of sexual assault can be said to have been proved.

8. The learned Special Judge thus committed a grave error in law in returning a finding of guilt for the offences punishable under Section 376 (3) of the Penal Code and Section 6 of the POCSO Act, 2012, submitted Mr. Jadhav.

9. Mr. D.J. Haldankar, the leaned APP, resisted the submissions on behalf Applicant. It was urged that, the testimony of the victim finds ample corroboration in the evidence of three witnesses and the mother of the victim to whom the victim had narrated the incident. The witnesses have consistently deposed that the Applicant had subjected the victim to penetrative sexual assault. It is not imperative that in every case there ought to be injury or rupture of the organ to sustain the charge of the penetrative sexual assault. Thus, the mere fact that no

injury or rupture was found by itself is not sufficient to discard the version of the victim and the witnesses, especially at this stage.

10. Ms. Rachita Padwal, the learned Counsel for Respondent No.2, supplemented the submissions of the learned App. Inviting attention of the Court to the provisions contained in Section 3 especially, Clause (b) of the POCSO Act, 2012 which defines penetrative sexual assault, Ms. Padwal submitted that a clear case for an offence punishable under Section 6 of the POCSO Act, 2012 was made out and the learned Special Judge committed no error in returning the finding of guilt. It was submitted that, the Applicant has been residing in the same building beyond four to five tenements of the house of the victim. Release of the Applicant on bail at this stage will further traumatize the victim.

11. At the outset, it is necessary to note that at the stage of consideration of an Application for suspension of sentence, the Appellate Court is not expected to meticulously evaluate the material on record. Only the *prima facie* merits of the Appeal and the attendant factors which bear upon the exercise of discretion are required to be examined. On the basis of the material on record, the Court has to analyze whether the prosecution case which found favour with the Trial Court is such that the convict stands a fair chance of success in Appeal. If the Court can *prima facie* draw an inference that ultimately the

convict may be entitled to an acquittal, the Court may exercise the discretion to suspend the sentence and enlarge the convict on bail. However, the Appellate Court is required to refrain from re-appreciating of the evidence and trying to pick up lacunae, loopholes or shortcomings in the prosecution case.

12. A case where a convict is sentenced to suffer a fixed term of imprisonment also stands on a slightly different footing. Ordinarily, where the convict is sentenced to suffer fixed term sentence and it is unlikely that the Appeal can be heard expeditiously and the convict has undergone a substantial part of sentence, the Court may exercise the discretion to grant bail during the pendency of the Appeal unless there are exceptional circumstances.

13. Reverting to the facts of the case at hand, *prima facie*, this Court finds it difficult to agree with the submissions on behalf of the Applicant about the vulnerability of the prosecution case. The witnesses, especially the sister of the victim and the friend of the victim, who accompanied the victim to the house of the accused, and another neighbour, have consistently deposed that the victim was crying and related the incident to those witnesses almost instantaneously.

14. The victim was also *prima facie* very forthright in disclosing the manner in which the sexual assault was perpetrated on her. Under the pretext of making her write by lying prostrate the Applicant had

allegedly removed the innerwear of the victim and inserted his finger in her anus. The testimony of the friend of the victim who had accompanied the victim to the house of the accused but was sent by the accused to fetch eatables, *prima facie* lends corroboration to the victim's version in material particulars.

15. The submission of Mr. Jadhav premised on the omission to state the factum of penetration before the learned Magistrate when the statement of the victim was recorded under Section 164 of the Code of Criminal Procedure, 1973, cannot be appreciated in isolation and torn out of context. Even before the Magistrate, the victim did state that the Applicant tried to press her anus. Likewise, the absence of reference to the said act in medico-legal examination report and the injury to, or rupture of, the organ of the victim, does not by itself is sufficient to jettison away the prosecution case, especially at this stage. If the broad view of the matter is taken, *prima facie*, the version of the victim finds ample corroboration in the evidence of other witnesses who appear to be natural witnesses.

16. In this view of the matter, this Court is not persuaded to hold that the Applicant has succeeded in making out such a strong *prima facie* case as to draw an inference that, eventually the Applicant may be acquitted of the offence punishable under Section 6 of the POCSO Act, 2012. Therefore, in the light of the attendant facts and circumstances,

this Court is not inclined to exercise the discretion in favour of the Applicant.

17. However, since the Applicant has been in custody for over three and half years, the hearing of the Appeal deserves to be expedited.

18. Hence, the following order:

: O R D E R:

- (i) The Application stands rejected.
- (ii) The hearing of the Appeal stands expedited.
- (iii) The Appeal be listed for hearing and final disposal on 22nd October 2026.

[N. J. JAMADAR, J.]