

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****INTERIM APPLICATION NO. 243 OF 2024****IN****CRIMINAL APPEAL NO. 436 OF 2024**

Mohammed Islam @ Babbu @ Shahrukh Gulam ... Appellant
Husain Indreshi

IN THE MATTER BETWEEN

Mohammed Islam @ Babbu @ Shahrukh Gulam ... Applicant
Husain Indreshi

Versus

State of Maharashtra & Anr. ... Respondents

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Ms. Anjali Patil a/w. Mr. Tohid Shaikh, Advocates for the Applicant.

Mr. S.S.Ghag, APP for the State.

Mr. Sagar S. Ambedkar (Appointed Advocate legal Aid) a/w. Ms. Disha Nidre, for Respondent No.2.

CORAM : R. M. JOSHI, J.

DATED : 17th NOVEMBER, 2025.

P.C. :

1. This application is for suspension of sentence and enlargement of the appellant on bail in connection with Special case (POCSO) No. 214 of 2020 whereby the appellant is sentenced to suffer 20 years imprisonment with fine for the offence punishable under Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act").
2. Learned counsel for the applicant submits that during the course of the trial neither victim herself nor the parents of the victim were able to

show the date of birth and age of the victim. It is her contention that they did not produce any birth certificate on record and the Trial Court has committed error in relying upon the birth certificate collected by the Investigating Officer without any corroboration that the birth certificate belongs to the victim only. She drew attention of the Court to the evidence of victim which according to her indicates that it is the case of a love affair. In the light of these said facts, it is her contention that since the appellant has already undergone 5½ years of sentence, he deserves to enlarge on bail.

3. Learned counsel for respondent No.2 and learned APP opposed the application. It is argued that even if the victim concedes to the love affair between her and appellant, since she was minor, her consent was immaterial. It is also argued that the age of the victim was below 14 years and therefore even if she has consented, the same may not be considered.

4. There cannot be any dispute made with regard to the propositions sought to be canvassed on behalf of the learned counsel for respondent No.2 that in case the victim is found of the age of not of the age of the maturity, her consent would be wholly immaterial. At the same time, the burden would be solely upon the prosecution to prove the age of the victim. Here in this case, prima facie perusal of the record indicates that neither victim nor her parents state the age of the victim leave apart any

document being produced through them. Investigating Officer though brings the birth certificate, however the same has been issued after the registration of the crime against the appellant. In the light of these facts, the admission of the victim about the love affair between herself and the appellant cannot be ignored.

5. Learned counsel for the respondent No.2 apprehends the contact of the victim by the appellant since they are residing in the same vicinity. Learned counsel for the appellant on instructions makes statement that appellant would not enter in the jurisdiction of Padgha police Station till decision of appeal. This would take care of apprehension if any of the victim.

6. All aforestated facts clearly indicate that the appellant could have reasonable case of success in the appeal at the time its final hearing. Since he had already undergone sentence of 5½ years, this Court finds it appropriate to enlarge the appellant on bail hence following order:

ORDER

- (i) The application stands allowed.
- (ii) Substantive sentence imposed against the appellant by Judgment and Order dated 11.08.2023 passed in Special Case (POCSO) No. 214 of 2020 stands

suspended till decision of the appeal.

- (iii) Appellant be enlarged on bail on furnishing PR bond of Rs.15,000/- with on surety in the like amount.
- (iv) The Appellant not to directly or indirectly contact any of the witnesses in any manner whatsoever.
- (v) The Appellant shall not enter in the area of Taluka Padgha Police Station till the decision of the appeal.
- (vi) Any breach of the conditions imposed herein shall result into appellant in taken in custody for undergoing remaining sentence.

7. The Interim Application is disposed of in above terms.

(R. M. JOSHI, J.)

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