

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

INTERIM APPLICATION NO. 3586 OF 2024

IN

CRIMINAL APPEAL NO. 1043 OF 2024

Sagir Mohamad Kismat Khan

.... Applicant

V/s.

The State of Maharashtra (P.S.O.) and anr.

.... Respondents

Mr. Santosh Sanjkar for the Applicant / Appellant.

Mr. K.V. Saste, Addl. PP for the Respondent No.1 – State.

Ms. Swatantri Waghmare for Respondent No.2.

**CORAM : SARANG V. KOTWAL AND
SHYAM C. CHANDAK, JJ.**

DATED : 18th JULY, 2025

P.C. :-

. This is an Application for bail pending Appeal.

2) The Applicant was convicted by the learned Special Judge, Raigad, Alibag vide the Judgment and Order dated 20/02/2019 passed in the Special (POCSO) Case No.60 of 2015. The Applicant was convicted for commission of the offence punishable under Section 376(2)(f)(n) of the Indian Penal Code, 1860 and he was sentenced to suffer imprisonment for life which was to mean imprisonment for the remainder of his natural life and to pay a fine of Rs.3,000/-. He was also convicted for commission of the offence punishable under Section 506 of IPC and was sentenced to suffer R.I. for two years and to pay a fine of Rs.2,000/- and in default to suffer further S.I. for one month. He was acquitted from the charges of

commission of the offences punishable under Sections 4 and 6 of the Protection of Children from Sexual Offences (POCSO) Act, 2012.

3) Heard Mr. Sanjkar, learned Counsel for the Applicant; Mr. Saste, learned APP for the State and Ms. Waghmare, learned Counsel for Respondent No.2.

4) The prosecution case is that, the victim was the step-daughter of the Applicant. The prosecution has not proved the age of the victim. However, the deposition recorded by the learned Judge shows her age was mentioned as 13 years at the time of her deposition. Victim has not supported the prosecution case. In the examination-in-chief, she has stated that out of that offence, a child is born to her and the child was about three years of age at the time of recording of her evidence.

In her examination-in-chief, she has stated that somebody else was responsible for making her pregnant. However, in her cross-examination conducted by the learned APP after she was declared hostile, she admitted that her mother was telling her that the Applicant should be helped to come out of jail and her mother had told her to depose that the person who made her pregnant, had run away. She further admitted that it would be correct to say that the Applicant was responsible for her child.

Similar is the evidence of PW-1 i.e., the mother of the victim and wife of the Applicant. In her cross-examination, she admitted that the victim had told her that the Applicant was responsible for her pregnancy.

Apart from that, there is a DNA report which mentions that the Applicant was the father of the victim's child.

5) Thus, at this stage, there is sufficient material against the present Applicant. Therefore, though the learned Counsel for the Applicant submitted that the victim had turned hostile and had not supported the prosecution case, it is quite clear that she wanted to help the Applicant. He further submitted that the Applicant is in custody from 20/07/2015.

6) The learned APP and the learned Counsel for the Respondent No.2 opposed these submissions. According to them, the offence was quite serious and there is sufficient material on record.

7) We have considered these submissions.

8) The evidence of the victim shows that she wanted to save the Applicant but she had admitted in her cross-examination that the Applicant was responsible for her pregnancy. There is a DNA report which shows that the Applicant was the father of the victim's child. At this stage, there is sufficient material against the Applicant. Therefore, we are not inclined to grant bail pending Appeal, to the Applicant. However, since the Applicant is in custody for almost ten years, we are inclined to fix the matter for hearing.

9) Hence, the following Order :-

- O R D E R -

(a) The Interim Application No.3586 of 2024 is rejected.

- 10) The Appeal be listed for hearing on the weekly final hearing board commencing from **25th August, 2025**. Liberty is granted to the learned Counsel for the Applicant to mention the matter for final hearing, if it is not taken up for hearing within a reasonable time.
- 11) Interim Application stands disposed of.

(SHYAM C. CHANDAK, J.)

(SARANG V. KOTWAL, J.)

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