

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****INTERIM APPLICATION NO. 3955 OF 2024****IN****CRIMINAL APPEAL NO. 541 OF 2025**

Vinod Bhuddu Sahani

... Applicant

Versus

State of Maharashtra and Anr.

... Respondents

.....

Ms. Manisha Devkar a/s. Ms. Anjali Kondvilkar, Advocates for the Appellant.

Mr. Chandrakant D. Mali, APP for the State.

Ms. Aishwarya Sharma, Advocate for Respondent No.2.

CORAM : R. M. JOSHI, J.**DATED : 3rd November, 2025.****P.C. :**

1. This application is for suspension of sentence and release of the appellant convict on bail during the pendency of the appeal.
2. The facts which led to filing of this appeal can be narrated in brief as under :
3. The offence came to be registered against the appellant vide C.R.No. 39 of 2018 with Taloja Police Station, Raigad for the offences punishable under Sections 376(2)(i), 363 of Indian Penal Code, 1980 (for short "IPC") and under Sections 4 and 6 of Protection of Children from Sexual Offences Act, 2012 (for short "POSCO Act").

4. The convict was charged with the offence of committing aggravated sexual assault on the victim aged about six years. During the trial apart from victim, informant i.e. mother of the victim, Medical Officer and other witnesses were examined. The learned Special Court in Special POCSO Case No. 35 of 2018 convicted the accused and sentenced him to suffer imprisonment for 10 years along with fine of Rs. 3000/-.

5. Learned counsel for the appellant/accused submits that he was arrested on 02.03.2018 and since last 7 years he is in jail. It is submitted that there is no possibility of the appeal being taken for final hearing and as such the appeal shall become infructuous. Apart from this, she drew attention of the Court to the evidence on record which according to her indicates that the possibility of the injury being caused to the private part of the victim by fall cannot be ruled out. It is her further submission that there is inconsistency intone in the evidence of the victim and her mother. It is also argued that there is no identification parade conducted by the Investigating Agency and the identity of the appellant which is the person who has committed the offence is not proved in view of the fact that there were 3 other persons staying in the premises where the incident has allegedly occurred. On these amongst other contentions, the release of the appellant is sought.

6. Learned counsel appearing on behalf of the victim as well as learned APP opposed the application. It is their contention that the offence committed with 6 years old girl is heinous in nature and having regard to the evidence on record this is not the case for suspension of the sentence. In this regard, evidence of victim as well as the Medical Officer is referred to. The evidence of the mother of the victim is also pointed out to substantiate the argument that identity of the accused has been duly established. It is submitted that having regard to the nature of the offence the application be rejected.

7. There is no doubt in fact that offence is heinous in nature. The question arises as to who is perpetrator in the said crime. No doubt the said question would be decided at the time of final hearing of the appeal. However at this stage it would be necessary for the Court to take into consideration the *Prima facie* case sought to be made out as chance of success for the appellant in this appeal. *Prima facie* the learned counsel for the appellant was able to show that inconsistencies in the evidence on record in order to show that there would be fair chance for success during the course of the final hearing of the appeal. In such circumstances, since the appellant is in jail for last 7 years and only 3 years remain of his imprisonment, this Court finds it fit to exercise the discretion to enlarge the accused on bail by suspending this substantive sentence. There is nothing

on record to indicate that the appellant had previous criminal history and that he is not likely to flee from justice. In view of above, following order:

ORDER

- i. The application stands allowed.
 - ii. The substantive sentence imposed against the accused by the impugned Judgment and Order dated 13.03.2019 passed in Special Pocso Case No. 35 of 2018 stands suspended.
 - iii. The appellant be enlarged on bail on furnishing one surety in the like amount of Rs.15,000/- with condition that the appellant to attend each date of hearing of the appeal.
8. Registry to ensure that order is communicated to jail authority for its compliance.

(R. M. JOSHI, J.)