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

**INTERIM APPLICATION NO.5047 OF 2024**
**IN**
**CRIMINAL APPEAL NO.420 OF 2025**

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Nanla Kailash Barela/Arya .... Applicant

versus

The State of Maharashtra & Anr. .... Respondents

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- Mr. Chetan S. Damre, Advocate for Applicant.
- Mr. Shreekant H. Yadav, APP for the State/Respondent.
- Mr. Akhil Kupade, Advocate for Respondent No.2.

**CORAM : SARANG V. KOTWAL, J.**
**DATE : 25th JULY, 2025**

**P.C. :**

1. This is an application for bail pending final disposal of the Appeal preferred by the Applicant. The Applicant was the sole accused before the learned Special (POCSO) Judge, Nashik, in Special (POCSO) Case No.31 of 2020. Vide the Judgment and Order dated 03/08/2024, the learned Trial Judge convicted the Applicant as follows :

MANUSHREE NESARIKAR
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(i) The Applicant was convicted for commission of the offence punishable u/s 3(a) r/w 4(1) of Protection of Children from Sexual Offences Act, 2012 as well as u/s 376(1) of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for 10 years and to pay a fine of Rs.25,000/- and in default of payment of fine to suffer rigorous imprisonment for three months.

(ii) The Applicant was also convicted for commission of the offence punishable u/s 506 of the Indian Penal Code and was sentenced to suffer rigorous imprisonment for three months and to pay a fine of Rs.500/- and in default of payment of fine to suffer rigorous imprisonment for one month.

(iii) All the sentences were directed to run concurrently.

2. Heard Mr. Chetan S. Damre, learned counsel for the Applicant, Mr. Akhil Kupade, learned counsel for the Respondent No.2 and Mr. Shreekant H. Yadav, learned APP for the State.

3. The prosecution case is that the victim was a distant

relative of the Applicant. According to the prosecution case, the Applicant was the cousin of the victim's sister's husband. At the time of the incident, the victim was 11 years of age. When the incident took place, she was staying with her married sister. On the date of the incident, at about 05.00 p.m. her sister and her brother-in-law had gone out for marketting. The Applicant entered their house and committed rape on the victim. The FIR was lodged and the investigation was conducted. At the conclusion of the trial, the Applicant was convicted and was sentenced as mentioned earlier.

4. Learned counsel for the Applicant submitted that he was arrested on 17/12/2019 and since then he is in custody. Therefore, out of the sentence of 10 years, he has almost completed 5 years and 7 months. Apart from that, the learned counsel for the Applicant submitted that the evidence of the victim herself shows that the incident could not be true and the FIR was lodged because there was some dispute between the Applicant's father and the victim's father. He submitted that even the age of the victim is disputed because her sister who is

examined as P.W.7 has stated that her own age was 29 years and her sister i.e. the victim was 5 years younger to her. Therefore, she would be definitely more than 20 years of age at the time of the incident. He further submitted that the medical evidence has not supported the prosecution case.

5. Learned counsel for the Respondent No.2 as well as the learned APP submitted that the incident could not be doubted because of some stray admissions given by the victim. Her age is proved through the evidence of P.W.8 Chetram Jamrah, who showed her date of birth as 01/01/2005. They submitted that in any case it was not a case of consent, but it was an incident which had taken place against her wish. Therefore, the conviction and sentence is rightly recorded.

6. I have considered these submissions. As rightly submitted by learned counsel for the Applicant, P.W.1 victim has admitted in her cross-examination that there was a compromise between the victim's father and the Applicant's father regarding their monetary transaction. It was signed by the respected members

of their village. She further admitted that since there was a compromise, the FIR was not lodged till 12/10/2019. She further clearly admitted that since the Applicant had not given money, they lodged the FIR. She further admitted that they had discussed about it and then had lodged the FIR. The FIR was lodged after 15 days. Therefore, there is substance in the submissions of the learned counsel for the Applicant that the FIR was a result of the discussion, deliberation and possible false implication because of the monetary dispute.

7. In this background, the evidence of Dr. Jyoti Patel who is examined as P.W.5 is also important matter. She has clearly deposed that no definite opinion could be given about recent sexual activity. She did not find any mark of forcible sexual intercourse on the victim.

8. Thus, sufficient doubt is raised about the prosecution case. In addition, the Applicant is in custody for about 5 years and 7 months.

9. Considering all these aspects together, I am inclined to grant bail to the Applicant.

10. Hence, the following order :

**O R D E R**

(i) During pendency and final disposal of the Criminal Appeal No.420 of 2025, the Applicant is directed to be released on bail on his furnishing P.R. bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand only), with one or two sureties in the like amount.

(ii) The Applicant shall not cause any disturbance to the victim or her family.

(iii) Interim Application stands disposed of accordingly.

**(SARANG V. KOTWAL, J.)**