

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 5087 OF 2024
IN
CRIMINAL APPEAL NO. 46 OF 2025**

Jivachha Kuse Mukhiya

... Applicant

versus

The State of Maharashtra & Anr.

.... Respondents

.....

Ms. Geeta R.Chataule a/w. Mr. Vishal Ingawale, Advocates for the Applicant.

Mr. Ashok S. Gawai, APP for the State.

Ms. Kanchan Pawar, Appointed Advocate for Respondent No.2.

CORAM : R. M. JOSHI, J.

DATE : 13th NOVEMBER, 2025.

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P.C. :

1. Heard learned counsel for the applicant.
2. This application is for suspension of substantive sentence imposed against the applicant/appellant by Judgment and Order dated 26.092024 passed by Additional Session Judge, Belapur in Special Case No. 90 of 2023 whereby he sentenced to suffer rigorous imprisonment for 20 years with fine.
3. Learned counsel for the appellant submits that the prosecution has failed to prove the age of the victim during the trial and consequently it cannot be held that she was the minor at the relevant time. He drew

attention of the Court to the affidavit filed by the victim and the true copy of the Adhar Card indicates her date of birth to be 08.01.2001 this according to him substantiate that at the time of apparent of the incident he was major. On these amongst all the circumstances he seeks enlargement the appellant on bail.

4. Learned APP opposed the application contending that the prosecution has succeeded in proving the victim to be minor at the relevant time hence her consent would be not relevant.

5. Learned appointed counsel for respondent No.2 makes statement of having personally spoken to the victim and affidavit of victim came to the filed at her own accord without any force or coercion. The Affidavit indicates that she records no objection for grant of bail to the appellant.

6. Apart from the fact that the victim has recorded no objection for grant of bail to the appellant, this Court finds substance in the contention of the learned counsel for the appellant that the said Affidavit, Aadhar card annexed to the Affidavit indicates of birth as 08.01.2001. The question as to whether this document to be considered for the purpose of deciding the appeal is left for decision at the final hearing of the appeal. Suffice it to say that the appellant could have a reasonable case for succeeding in the appeal on merit. More particularly, when the victim who is admittedly

now major person records no objection for grant of bail to the applicant hence application is allowed on following terms:

ORDER

- i. The suspension of sentence imposed against the appellant vide Judgment and Order dated 26.09.2024 passed by Additional Session Judge, Belapur in Special Case No. 90 of 2023 stands suspended till the decision of the appeal.
 - ii. Appellant be enlarged on bail on furnishing P.R.Bond of Rs.15,000/- with one surety in the like amount.
 - iii. Bail before the Trial Court.
 - iv. The appellant shall not contact the victim directly or indirectly and in any manner whatsoever.
 - v. Any breach of these conditions will result forthwith into vacating of this order and taking the appellant in custody for undergoing sentence.
7. The Interim Application is disposed of.

(R. M. JOSHI, J.)