

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO.5190 OF 2024
in
CRIMINAL APPEAL (ST) NO.26049 OF 2024**

Iliyaz @ Ilu Nawaz Khan Appellant

V/s.

The State Of Maharashtra And Anr. Respondents

Ms. Sayed Shabana M. Ali, Advocate for the Appellant.

Mr. C. D. Mali, APP for Respondent No.1-State.

Mr. Tohid Shaikh, Advocate for the Respondent No.2(Appointed through Legal Aid).

CORAM : R.M. JOSHI, J.

DATE : 03rd DECEMBER 2025

P.C:-

1. This application is for suspension of sentence and enlargement of the applicant/appellant on bail in connection with the impugned judgment and order dated 28th February 2022 passed in POCSO Special Case No.693 of 2019, whereby the appellant is convicted for the offence punishable under Section 4 of Protection of Children from Sexual Offences Act, 2012 and sentenced to suffer 20 years of rigorous imprisonment with fine.

2. Learned counsel for the appellant submits that the appellant is behind bar for last eight years. It is her further submission that there is doubt with regard to the exact age of the victim as the

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victim claims her age to be 16 years, whereas the documentary evidence indicates her age as 15 years and 11 months and the history given to the Medical Officer shows that she was 17 year old. She further drew the attention of the Court to the cross-examination of the victim, wherein she candidly admitted the love affair with the accused. Reference is also made to the history given to the Medical Officer about the consensual relationship between the accused and victim. It is argued that there is no support to her testimony by medical evidence as she refused to undergo the medical examination. It is thus her submission that the appellant has reasonable chance of success in the appeal.

3. Learned APP as well as learned counsel for the respondent opposed the application by contending that the victim claims in her substantive evidence before the Court that she was forced to the said physical relationship. It was also argued that the documentary evidence indicates that the victim was minor and hence, her consent for the sexual relation is immaterial.

4. At this stage, the Court has to see whether there would be any reasonable chance for the appellant to succeed in the appeal. As rightly pointed out by learned counsel for the appellant that there is evidence indicating three different age of the victim. Apart from this, the victim admits that she had love relationship with the

accused but has refused to undergo medical examination. Having regard to these facts, it could be said that the appellant has reasonable chance of success in appeal. He is behind the bar for eight years. Hence, the following order ;

ORDER

1. The application is allowed.
2. The substantive sentence imposed against the appellant by impugned judgment and order dated 28th February 2022 passed in POCSO Special Case No.693 of 2019, stands suspended till the decision of appeal.
3. The appellant be enlarged on bail on furnishing P.R.Bond of Rs.15,000/- with one solvent surety in the like amount to the satisfaction of the Trial Court.
4. The appellant not to directly or indirectly contact the victim in any manner whatsoever till the decision of the appeal.
5. Any breach of condition, will result in this order being vacated and appellant being required to undergo the sentence.

The interim application stands disposed of in above terms.

5. It is clarified that above observations are made on prima facie consideration of the material on record and the same shall not bind the parties during the final hearing of the appeal.

(R.M. JOSHI, J.)