

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

Interim Application No. 413 of 2025

in

Criminal Appeal No. 85 of 2025

Prafful Somnath Gangawane

Age 22 years, R/o. Rajiv Gandhi

Nagar, Govardhan, Gangapur Village,

Tal. & Dist. Nashik. At presently

lodged in Nashik Road Central Prison

... Applicant

versus

1. The State of Maharashtra

Through PSO Sarkarwada Police

Station, Nashik.

2. X Y Z (Victim)

R/o. Ashok Stambh, Suprabha

Apartment, Nashik, Dist. Nashik.

... Respondents

Ms Savvy Kolhekar i/b Mr Aniket Vagal, for the Applicant.

Dr Ashwini A Takalkar, APP, for Respondent No.1 / State.

Ms Shivani Kondekar, for Respondent No.2 (through Legal Aid).

WASI Sushila Prakash Avhad, Sarkarwada Police Station, Nashik, is present.

Coram: R.N. Laddha, J.

Date: 16 April 2025

P.C.:

. By the present application, the applicant who has filed an appeal, calling his conviction and sentence imposed upon him by the Additional Sessions Judge, Nashik, in Special (POCSO) Case No. 167 of 2023, seeks suspension of his sentence and pray for his release on bail, pending the adjudication of his appeal. The applicant was convicted for the offence punishable under Sections 376, 376(2)(n) of the Indian Penal Code and Section 4 of the Protection of Children from Sexual Offences Act, 2012. However, as per Section 42 of the POCSO Act, he was sentenced only under Section 4 of the POCSO Act. The major punishment imposed upon him is for 10 years rigorous imprisonment besides fine of Rs.500/-.

2. The learned Counsel for the applicant submits that the victim, in her testimony before the Court, did not support the prosecution's case. It is further contended that the prosecution failed to establish the age of the victim, as her mother's evidence made no reference to it. In her deposition, the victim herself admitted that she was more than 18 years of age at the time of the incident. The learned Counsel further submits that the applicant married the victim after the incident and that they are now residing together happily. A copy of the marriage certificate was also tendered for the Court's consideration. At

the time of the incident, the applicant was 21 years old and had no criminal antecedents. Furthermore, he remained on bail throughout the trial period and did not misuse the liberty granted to him.

3. The learned Counsel for respondent No.2 submits that the victim, in her testimony, did not support the prosecution's case and has categorically stated that she was over 18 years at the time of the incident. The learned Counsel further submits that the victim and the applicant got married after the incident and are presently living together happily. The victim has also expressed no objection to the grant of bail to the applicant.

4. On the other hand, the learned APP opposed the present application, contending that the offence is of a serious nature. She further submits that all the issues raised by the learned Counsel for the applicant are matters to be adjudicated at the stage of final hearing.

5. I have carefully considered the submissions advanced and perused the evidence of the victim, who has been examined as P.W.1. Upon perusal of her testimony, it is evident that the victim did not support the case of the prosecution and was declared hostile. In her deposition, she stated that she was

acquainted with the applicant, and over time, their acquaintance developed into a romantic relationship. She further deposed that she had informed her mother about their relationship, which led to a quarrel between them. Following this, the victim left home and began residing in a hostel, from where she also took up employment. She categorically denied that the applicant ever established any physical relationship with her and refuted all allegations made in the prosecution's case. Furthermore, she confirmed that she married the applicant / accused in the year 2023. She also denied the prosecution's claim regarding date of birth being in the year 2006. The testimony of the victim's mother regarding the incident is based on the victim's statement allegedly made before the police.

6. It is also pertinent to note that the applicant was on bail throughout the trial and has not misused liberty granted to him. The present appeal has been filed in the year 2025, and considering the pendency of the older appeals, it is unlikely to be heard immediately. In view of the above, a case is made out for the suspension of sentence during the pendency of the appeal, and for grant of bail to the applicant. Accordingly, the following order is passed.

Order

The sentence imposed upon the applicant vide Judgment and Order dated 15 January 2025 passed by the Additional Sessions Judge, Nashik, in Special (POCSO) Case No.167 of 2023 is suspended during the pendency of the appeal and he shall be enlarged on bail on executing a personal Bond of Rs.25,000/- and furnishing one or more sureties in the like amount.

7. The interim application stands disposed of accordingly.

(R.N. Laddha, J.)