

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 651 OF 2025
IN
CRIMINAL APPEAL NO. 157 OF 2025

Vakil Ahmad Sagirhasan Shaikh

... Applicant/
Appellant

Versus

The State of Maharashtra and anr.

... Respondents

Mr. Shadab Khopekar, Advocate for the Applicant/Appellant.

Mr. Mayur Sonavane, APP for Respondent No.1-State.

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

API-Mr.Shailendra Patil, API, Nayanagar, Mira Bhayander Vasai-Virar
Police Commissionerate present.

CORAM : R. M. JOSHI, J.

DATED : 20th NOVEMBER, 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 6th January 2025 passed in Session Case No. 416 of 2021, whereby the appellant is sentenced to suffer imprisonment for 20 years for the offences punishable under Section 376 (2) of the Indian Penal Code 1860 (for short "IPC") and Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act").

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2. Learned counsel for the applicant/appellant submits that the alleged incidents are said to have occurred between 20th March 2020 and 15th June 2020 whereas the first FIR came to be lodged on 10th April 2021. It is his submission that the complainant i.e. mother of the victim had made similar complaint against another person of sexually assaulting the victim and has obtained compensation. He drew attention of the Court to the cross-examination of the witnesses i.e. cross-examination of the sister of the informant as well as the husband of the informant who candidly admit these facts. He drew attention of the Court to the medical evidence which according to him indicates that there was no sexual assault as claimed. It is argued that even if it is accepted that the report came to be lodged after about a year, there ought to have been at least old injuries on the private parts of the victim. He drew attention of the Court to the admission that the hymen of the victim was intact and that no injuries were found on her person.

3. Learned counsel for respondent No.2 and learned APP opposed the application on the ground that the offence has been committed against a minor. It is their submission that the father of the victim was not aware of the fact of entitlement of compensation, if complaint under POCSO Act is made. It is further argued that the sole testimony of the victim would be sufficient to convict an accused without seeking corroboration. Learned APP submitted that the daughter-in-law of the appellant has also deposed against him.

4. There cannot be any dispute with regard to the proposition of law that in case the evidence of victim is unblemished, the Court is not expected to seek corroboration to the said evidence in order to convict an accused. However, at the same time, if the testimony of the victim is clouded with doubt and there is no corroborative evidence to hold any sexual assault, the Court cannot ignore the said fact.

5. Here in this case, apart from the fact that no report was lodged for a period of about a year of the incident, there is absolutely no medical evidence to indicate sexual assault on the victim. Even if it is accepted that the medical examination of the victim is done after a year as rightly argued on behalf of appellant, at least old injuries ought to have been found on her private part, more particularly, when there is allegation of even unnatural sex. In such circumstances, if there is no evidence to show any such sexual assault being committed on victim, the delay becomes relevant. Similarly the admission of the witness of the prosecution about the informant having received compensation on account of lodging complaint under POCSO Act on earlier occasion cannot be ignored. Here in this case, exactly same allegations seems to have been made on earlier point of time.

6. Having regard to these facts, this Court finds that there would be a reasonable chance of success for the appellant to succeed in appeal. The appellant has no criminal history and he is not likely to flee from justice. Hence, the following order:

ORDER

1. The application is allowed.
2. The substantive sentence imposed on the appellant by the impugned judgment and order dated 6 January 2025, passed in Sessions Case No. 416 of 2021 by the Additional Sessions Judge, Thane, is suspended until the disposal of the 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 or her family members in any manner whatsoever till the decision of the appeal.
5. The appellant not to enter the jurisdiction of Bandra Police Station till the decision of the appeal.
6. 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.

7. 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.)