

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 845 of 2025
in
CRIMINAL APPEAL NO. 212 of 2025**

Sagar Santosh Wagh

... Applicant/s
Appellant/s

versus

The State of Maharashtra and anr.

.... Respondent/s

Mr. Aniket Vagal along with Ms. Juhi Kadu and Ms. Savvy Kolhekar,
Advocates for the Applicant/Appellant.

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

Mr. Harshavardhan Kshirsagar i/b. Ms. Sakshi Mane, Advocate for the
first informant.

CORAM : R. M. JOSHI, J.

DATE : 12th NOVEMBER, 2025.

P.C. :

1. The appellant is seeking enlargement on bail and suspension of substantive sentence imposed against him by the judgment and order dated 24th January 2025 in Special (POCSO) Case No. 186 of 2023 whereby the appellant is sentenced to suffer imprisonment for a period of 20 years with fine.

2. Learned counsel for the appellant drew attention of the Court to the evidence of the investigating officer, which according to him indicates that the statement of the victim at the first instance was recorded in presence of her mother, wherein there is no allegation made against the

appellant/accused of commission of any sexual intercourse by him. It is his submission that the testimony of the victim is unreliable for the reason that it is full of contradictions and omissions which are proved to the Investigation Officer and hence cannot become basis of conviction. He further drew attention of the court to the admission of the victim in the cross-examination, wherein four photographs were shown to her, which she admitted to be the photographs of the persons in love. It is his submission that having regard to the possibility of the false implication, it is a fit case for enlargement of the appellant on bail. It is claimed that appellant has no criminal history behind him, and he is not likely to flee from justice.

3. Learned counsel for respondent No.2/victim and learned APP opposed the application. Learned APP contended that the statement of the victim was not recorded in presence of the mother of the victim but in presence of the father of the accused. It is his submission that the victim has made supplementary statement wherein she has categorically stated about the accused establishing forcible physical relations with her. This according to him gets support from the medical evidence. He also argues that the history given to the Medical Officer also indicates so. It is submitted that the age of the victim was 13 years 10 months and, as such, even if the case of the appellant of love affair is accepted, she could not have given any valid consent for the sexual relationship. On these amongst other submissions, rejection of application is sought.

4 There cannot be any dispute made with regard to the proposition sought to be canvassed on behalf of the prosecution that sole testimony of the victim, if found reliable, could become a basis for conviction of the appellant. Here in this case, however, the victim as stated by the Investigating Officer has made statement to the police for the first time in presence of her own mother wherein there is no allegation of any sexual intercourse with her. In such circumstance, at this stage, this Court finds it difficult to accept that under any force, coercion etc. such statement was made. The Investigating Officer, in her examination-in-chief itself states about recording of the statement in presence of the mother. Though the victim claims that when she was brought to the police station, she told the incident to the police, however, there is nothing on record to indicate any recording of the statement by the police then. Apart from that, the history given to the Medical Officer is sought to be relied upon but as admitted by the Medical Officer, he has not recorded the said history and, therefore, was unable to say as to whether it was given by the victim herself or her mother. Thus the history given to the Medical Officer has not been proved. In such circumstances, the appellant would have a reasonable case of success in the appeal. He is having no criminal history behind him and is not likely to flee from justice. The appeal is not likely to be taken for hearing in short period of time, hence, the following order:

O R D E R

1. The application is allowed.
2. Substantive sentence imposed against the appellant in Special (POCSO) Case No. 186 of 2023 by judgment and order dated 24th January 2025 passed by the Special Judge, Nashik, 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 is directed not to enter the jurisdiction of Sinnar till the decision of the appeal and not to contact victim in any manner whatsoever. In case, there is breach of this condition or any other condition, the appellant shall be taken into custody forthwith and be sent to jail to suffer the remaining sentence.
The interim application stands disposed of in above terms.

(R. M. JOSHI, J.)