

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

**Interim Application No.879 of 2025
In
Criminal Appeal (St) No.4877 of 2025**

Kailas Masaji Gaikwad
Age: 33 years, Occ: Labour work,
R/a Namdevwadi Chawl,
Room No.29, Talawaligaon,
Navi Mumbai, Thane
(At present in Amravati prison) ... Applicant

Versus

1. State of Maharashtra
(At the instance of Inspector
of Police, Rabale Police Station)
2. XYZ
Age: 30 years
through Rabale Police Station,
Navi Mumbai. ... Respondents

Mr Dattatray Solankar, along with Shrimant Chothave, for
applicant.

Mr Arfan Sait, APP, for respondent No.1/ State.

Mr Manas Gawankar, for respondent No.2 (appointed through
legal aid)

GPSI Pramod Farande, Rabale Police Station, is present.

**Coram: R.N.Laddha, J.
Date: 24 April 2025.**

P.C.:

. Mr Manas Gawankar is appointed to espouse the cause of respondent No.2.

2. The applicant faced trial in Special Case POCSO No.194 of 2016 before the Sessions Court, Thane, for committing the offences punishable under Sections 342, 363 and 376 of the Indian Penal Code ('IPC') and Sections 3, 4, 5 and 6 of the Protection of Children from Sexual Offences Act, 2012 ('POCSO Act').

3. The offence in question stems from the allegation that the applicant sexually assaulted the victim, a minor. At trial, six witnesses were examined by the prosecution. By the judgment and order dated 2 November 2019, the trial Court acquitted the applicant of the offence punishable under Section 363 of the IPC and convicted him for the offences under Sections 342 and 376 of the IPC and Section 6 of the POCSO Act. He was sentenced as follows: (i) ten years rigorous imprisonment and a fine of Rs.10,000/- (with default stipulations) for the offence punishable under Section 6 of the POCSO Act, and (ii) three months rigorous imprisonment and a fine of Rs.1,000/- (with default stipulations) for the offence punishable under Section 342 of the IPC. These sentences were directed to run

concurrently. Aggrieved thereby, the applicant preferred an appeal before this Court, and by the present application, seeks suspension of the sentence and release on bail.

4. Mr Dattatray Solankar, the learned Counsel appearing on behalf of the applicant, submits that the prosecution's case suffers from material inconsistencies and significant evidentiary shortcomings. He argues that the testimonies of the prosecution witnesses are fraught with contradictions and discrepancies, and, as such, are neither reliable nor sufficient to establish the guilt of the applicant beyond reasonable doubt. The learned Counsel asserts that the overall quality of the evidence fails to inspire the confidence. He further submits that the applicant has been falsely implicated in the alleged offence and that his continued incarceration amounts to a grave miscarriage of justice. Mr Solankar emphasises that the applicant has been languishing in jail for a significant period.

5. Mr Arfan Sait, the learned Additional Public Prosecutor representing respondent No.1/ State, and Mr Manas Gawankar, the learned Counsel appearing on behalf of respondent No.2, oppose the applicant's plea for bail. They emphasise the gravity and sensitivity of the offence for which the applicant stands convicted, asserting that the nature of the charge itself warrants

a cautious and stringent approach. The learned APP points out that the victim was a minor, barely six years old at the time of the incident, and further highlights the disturbing fact that the applicant is a relative of the victim, thereby aggravating the breach of trust involved. He submits that the trial Court, after a thorough and detailed examination of the evidence, rightly concluded that the applicant's guilt was proven beyond reasonable doubt. He contends that the defence failed to bring forth any contradictions, omissions, or discrepancies that strike at the core of the prosecution's case. On the contrary, the evidence on record, including the consistent and cogent testimony of the victim and the corroborating medical evidence, forms a robust foundation for the conviction. According to Mr Sait, given the serious nature of the offence, the age and vulnerability of the victim, and the evidence on record, no case is made out for suspension of sentence and grant of bail.

6. This Court has given anxious consideration to the rival submissions canvassed across the Bar.

7. In *K.C. Sareen Vs CBI, (2001) 6 SCC 584*, the Hon'ble Supreme Court held as follows:

“11. The legal position, therefore, is this:

though the power to suspend an order of conviction, apart from the order of sentence, is not alien to Section 389(1) of the Code, its exercise should be limited to very exceptional cases. Merely because the convicted person files an appeal in challenge of the conviction the court should not suspend the operation of the order of conviction. The court has a duty to look at all aspects including the ramifications of keeping such conviction in abeyance.”

8. Upon reviewing the records, the offences for which the applicant has been convicted appear serious. It is undisputed that the victim was a minor aged about six years old and the applicant, who lived in the vicinity, is her relative. The testimony of the victim, PW-2, is consistent with her statement, lending credibility to her version of events. In her deposition before the Court, the victim gave a coherent and consistent account of the traumatic events she endured. She testified that while she was returning home from a temple with Supriya, the applicant took her to his house and bolted the door from the inside. The victim further testified that the applicant then removed her clothes against her will and subjected her to a sexual assault. Her deposition remained unshaken during cross-examination, and it reflected both the trauma she endured and the clarity with which she recalled the sequence of events.

Meanwhile, the victim's mother distressed by her daughter's absence, came to the applicant's house. The applicant deliberately misled her, denying that the victim was present inside. However, upon hearing her mother, the victim came out of the room, and the incident came to light. The key allegations align with the medical evidence. The prosecution has brought forth serious and substantial material that directly implicates the applicant in the commission of the alleged offence.

9. Sexual assault on minors can lead to trauma which profoundly affects their adolescent years, leaving them with lasting and irreparable psychological scars. The evidence on record, particularly the consistent testimony of the minor victim and the corroborating medical findings, does not justify the suspension of the sentence and the applicant's release on bail. All the contentions raised by the learned Counsel for the applicant will have to be tested at the final hearing stage. Accordingly, this Court finds no merit in the present application and the same stands rejected.

(R.N. Laddha, J.)