

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 1185 of 2025
in
CRIMINAL APPEAL NO. 120 of 2025

Rahul Ambadas Gundure

... Applicant/s
Appellant/s

versus

The State of Maharashtra and anr.

.... Respondent/s

Mr. Milan Desai along with Mr. Zafar Gujar, Advocate for the Applicant/Appellant.

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

Ms. Falguni Brahmbhatt, Advocate for Respondent No.2(appointed through Legal Aid).

PSI-Usha Khose, Pairavi Officer, MHB Colony Police Station, Mumbai.

CORAM : R. M. JOSHI, J.

DATE : 27th 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 19th December 2024 in Special POCSO Case No. 327 of 2021, whereby the appellant is convicted for offences punishable under Section 376 of the Indian Penal Code, 1860 and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012, and sentenced to suffer rigorous imprisonment for 20 years with fine.

2. Learned counsel for the applicant/appellant submits that the entire evidence on record, more particularly testimonies of the victim and her mother are full of inconsistencies and contradictions making them unreliable to sustain the judgment of conviction. He drew attention of the Court to the fact that the FIR was lodged in respect of the incident occurred in January and March 2021. According to him, the victim has candidly admitted about no incident having occurred in January 2021 in her examination-in-chief itself. Insofar as the incident of March 2021, it is argued that the said statement of the victim does not get corroborated either from the history given to the Medical Officer which is claimed to have been given by the mother nor from the evidence of mother herself who denies to have got knowledge of the said incident from the victim. It is argued that the prosecution has failed to prove the statement of the victim recorded under Section 164 of the Code of Criminal Procedure, 1973 in accordance with law. He drew attention of the Court to the cross-examination of the victim, wherein she admits that whatever has been stated in respect of the incident of March 2021 is absent in her statement under Section 164 of Cr.P.C.. It is further pointed out that the Investigating Officer gave admission about appearance of name of one Pednekar in the medical papers, however, no investigation has been done in this regard. It is submission that having regard to this fact, the appellant has reasonable chance of success in the appeal and since the appeal is

not likely to be taken for hearing in short period of time, if the appellant is not enlarged on bail, the appeal will become infructuous.

3. Learned counsel for respondent 2 as well learned APP opposed the application. According to them, the victim is proved to be minor and her testimony is sufficient to prove the incident of March 2021. Reference is made to the cross-examination of the victim, more particularly, paragraph No.16 of the cross-examination to argue that in the cross-examination, the entire incident of March 2021 is put to the witness and she admitted occurrence of the incident. Learned APP, apart from raising other contentions, drew attention of the Court to the Statement under Section 313 of the Cr.PC., wherein it is contended that the accused has not explained as to why the witnesses are deposing against him.

4. In order to suspend the sentence and to enlarge any convict on bail, such convict will have to make out case of reasonable chance of his success in the appeal. At this stage, the Court is not expected to record any findings on the merit of the case. Pima facie, however, perusal of the record indicates that there are material contradictions and inconsistencies in the statement of the victim herself as compared to the FIR and earlier statements. Apart from this, the evidence of the mother also indicates that the police had called one more person in connection with this crime and thereafter, he was let go. Similarly, there is prima facie substance in the contention of learned counsel for the appellant that there is no

investigation with regard to the person whose name reflects from the medical papers.

5. Having regard to overall facts of the case, it could be said that the appellant has reasonable chance of success in the appeal. The appeal is not likely to be taken for hearing in short period of time. 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 against the appellant by impugned judgment and order dated 19th December 2024 passed by Additional Session Judge, Borivali (Div), Dindoshi, Goregaon, Mumbai in Special POCSO Case No. 327 of 2021 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 or any family members of 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.

6. 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.)