

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 1327 OF 2025
IN
CRIMINAL APPEAL NO. 339 OF 2025**

Deepak Kalicharan Kanojia ... Appellant
versus
State of Maharashtra & Anr. Respondents

.....

Mr. Veerdhawal Deshmukh, Advocate for the Appellant.
Mr. Y. M. Nakhawa, APP for the State.
Mr. Shailesh Kharat, Appointed Advocate for Respondent No.2.

CORAM : R. M. JOSHI, J.

DATE : 16th DECEMBER, 2025.

Digitally signed
by SONALI
SATISH
KILAJE
Date: 2025.12.18
14:49:06
+0700

P.C. :

1. This application is for suspension of sentence and enlargement of appellant on bail in connection with Judgment and Order dated 07.03.2025 passed in Sessions Case No. 104 of 2021 whereby the appellant is convicted for offences punishable under Sections 354, 354(A), 323, 504, 506 and 509 of the Indian Penal Code, 1860, under Section 10 and 12 of Protection of Children from Sexual Offences Act, 2012 (for short “POCSO Act”) & Section 75 & 77 of Juvenile Justice (Care and Protection of Children)Act, 2015 and has been sentenced to suffer 6 years rigorous

imprisonment with fine.

2. Learned counsel for the appellant submits that since the appellant is directed to undergo sentence of six years and as he has already undergone imprisonment for 4½ years, he is entitled to be enlarged on bail in view of the fact that the appeal is not likely to be heard in a short period of time. On merit it is his submission that this is a classic case of children being made tools in a dispute between husband and wife. It is argued that the First Information Report (“FIR”) came to be lodged after substantial period of time without any explanation therefor. It is his submission that the evidence of the victim girl and boy is inconsistent and inspired no confidence. This, according to him becomes more important in view of the fact that the victims refused to undergo medical examination. Thus, it is his case that the appellant would have reasonable chance of success in appeal.

3. Learned counsel for respondent No.2 opposed the application by contending that it was not possible for the mother of the victims to file report immediately since the perpetrator of the crime is her husband and father of the victims. It is his submission that the evidence of the victims is sufficient to sustain conviction against the accused. It is argued that the victim girl as well as informant- mother had left the chits at the residence of the accused which indicate that they were forced to leave the house

owing to the atrocities committed by the accused against them. It is submitted that, having regard to the nature of the acts alleged against the accused, if the appellant is released on bail there would be danger to the life of the children.

4. In response to this submission, learned counsel for the appellant makes statement on instructions that if the appellant is enlarged on bail he will not enter the jurisdiction of the City of Mumbai and Suburban, so also District of Thane except for attending the matrimonial proceedings between him and his wife in the Court at Kalyan, till decision of appeal.

5. Learned APP also opposed the application by submitting that the victims are minor and considering the fact that the accused is their father, it was not easy for them or their mother to lodge report to the police immediately.

6. This is not the stage wherein this Court would go in detail of the evidence on record to see whether the accused is entitled for acquittal or the judgment of the conviction deserves confirmation. At this stage, what is expected from this Court is to see whether there is fair chance of success for the appellant in appeal at the time of final hearing.

7. Prima facie perusal of the record indicate that the FIR came to be lodged after about a year of the alleged occurrences of the atrocities committed by accused. The chits left by the victim girl and her mother do

not indicate any sexual assault being caused by the accused on victims. Even from their substantial evidence though it can be said that the other testimony is consistent with regard to the physical assault, sexual abuse cannot be said to have been established in view of the fact that there are inconsistencies in the statements, so also refusal on their part to undergo medical examination. Thus prima facie, appellant has fair chance of success in appeal. There is no likelihood for the appeal being taken up for hearing in a short period of time. The appellant is sentenced to suffer rigorous imprisonment of 6 years out of which he has already undergone a period of 4½ years in jail.

8. There is voluntary statement made by the appellant of not entering in the local jurisdiction of city of Mumbai and Suburban so also in the District of Thane till decision of the Appeal except for attending matrimonial proceedings before the Court at Kalyan.

9. The statement is accepted as undertaking to this Court. In view of the said statement, apprehension of the informant and victim is taken care of.

10. In view of above, following order.

ORDER

- i. The appellant be released on bail on furnishing P.R.Bond of Rs.15,000/- with one surety in the like

amount.

- ii.** The suspension of sentence imposed against the appellant by Judgment and Order dated 07.03.2025 passed in Sessions Case No. 104 of 2021 stands suspended till decision of appeal.
- iii.** The appellant shall not enter in the local jurisdiction of city of Mumbai and Suburban so also in the District of Thane till decision of the Appeal except for attending matrimonial proceedings before the Court at Kalyan.

11. Interim Application is disposed of.

(R. M. JOSHI, J.)