

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

**INTERIM APPLICATION NO.1890 OF 2025
IN
CRIMINAL APPEAL NO.546 OF 2025**

Bhagirath @ Rock Kishan Jethe Applicant

V/s.

State of Maharashtra & Anr. Respondents

**WITH
INTERIM APPLICATION NO.949 OF 2025
IN
CRIMINAL APPEAL NO.233 OF 2025**

Sunny Ramesh Patil @ Sunya Applicant

V/s.

State of Maharashtra & Anr. Respondents

Mr.Rafique Ahmed Shaikh and Mr.Hasan Sayed & Mariyati K.,
for the Applicant.

Ms.Seema Shukla a/w Mr.V.S. Tiwari, Ms.Priya Muthupandi, for
the Applicant in Criminal Appeal No.233 of 2025.

Ms.Shreya Tiwari, Appointed Advocate for Respondent No.2 in
both Appeals.

CORAM : R.M. JOSHI, J.

DATE : 10th NOVEMBER 2025

P.C:-

. By consent of both sides these Applications are
heard and decided together by this common order.

2. These Applications are for suspension of substantive sentences and release of Appellants/Applicants on bail, in connection with the judgment and order dated 31st January 2025 passed in POSCO Case No.509 of 2020, whereby the Appellants are convicted for the offences punishable under Section 6 of Protection of Children from Sexual Offences Act, 2012 ('POCSO' for short) and sentences to suffer RI for 20 years with fine. They were also convicted for the offences punishable under Section 362 read with Section 34 of the Indian Penal Code ('IPC' for short), Section 376D of IPC and Section 4 of the POCSO Act.

3. The charge against the Appellants/Applicants is that they forced the victim who is minor to the spot of the incident and committed sexual assault on her. The learned Trial Court accepted the evidence led by the prosecution and convicted the Appellants/Applicants.

4. The learned counsel for the Appellants/Applicants submits that the prosecution has failed to prove the charges against the Appellants/Applicants. They drew attention of the

Court to the testimony of victim which according to them is wholly unreliable and conviction cannot sustain on the basis of the same. It is further argued that, the First Information Report has not been proved by the prosecution for non-examination of father of the victim who claimed to have lodged the said report. It is further argued that, the Trial Court has failed to take into consideration evidence of witness Imran who in no certain terms states about the non-occurrence of such incident and thus having regard to the said evidence, the conviction against the Appellants/Applicants would be set aside, finally. It is argued that the prosecution has failed to prove identity of the present Appellants/Applicants to be perpetrators of the crime and this becomes decisive factor in this Appeal. It is further submitted that, the Trial Court has discarded the identification parade. However, has as wrongly accepted that the identification of the Appellants/Applicants on the basis of the photographs affixed on the arrest form. It is their submission, since, it is the case of the prosecution that the victim and Appellants/Applicants were unknown to each other. It is

absolutely necessary to prove identification more particularly when the victim does not give any description of the accused and that the incident has occurred in the night where it was dark.

5. The learned counsel for Respondent No.2-Victim and APP opposed the Application. It is argued that, there is limited jurisdiction of this Court while exercising powers under Section 389 of Cr.P.C. to suspend the sentence. To support this submission she place reliance on following judgment:-

Sr.No	Case Details	Reported In
1	Lilaben V/s. State of Gujarat & Anr.	(2025(SCC Online 833)
2	Lok Mal Alias Loku V/s. State of UP	(2025) 4 SCC 470
3	Deepak Kumar Sahu V/s. State of Chhatisgarh	(2025) SCC Online SC 1610
4	Ganesan V/s. State Represented by Its Inspector of Police	(2020) 10 SCC 573
5	Phool Singh V/s. State of Madhya Pradesh	(2022) 2 SCC 74
6	Ajay S/o. Shri. Harisingh V/s. State of Rajasthan	(Crimianl Misc. Supsension of Sentence (Appeal) No.284 of 2023)

7	Jamnalal V/s. State of Rajasthan & Anr	(2025) SCC Online SC 1641
8	Omprakash Sahni V/s. Jai Shankar Chudhary & Anr.	(2023) 6 SCC 123)

6. It is further argued that, this Court is not expected to find out point/loopholes in the judgment of the conviction at this stage though the said exercise could be permissible at the time of the final hearing of the Appeal. She relying upon the judgment of the Rajasthan High Court in the case of ***Ajay S/o. Shri. Harisingh V/s. State of Rajasthan*** (Supra), argued that in the similar facts, the said High Court has refused to enlarge convict on bail. Finally it is argued that in case the Appellants are enlarged on bail there is danger the life of the victim.

7. There cannot be any dispute made with regard to the preposition of the law sought to be argued on behalf of the Appellants/Applicants relying upon the judgment cited supra. However, at the same time the Court while deciding the Application for suspension of the sentence is required to take into consideration the reasonable chances of the Appellants/Applicants of success during the hearing of the

Appeal. Through the Court is not expected to minutely consider the evidence on record as if done at the time of decision of Appeal finally, however, if any glaring error is pointed out from the record in the judgment and the same goes to the root of the matter, the same cannot be ignored. The Court also is required to see antecedents if any against Appellants/Applicants.

8. Apart from the fact the evidence of the victim has some contraction and is not supported by the medical evidence, significantly, it is the case of the prosecution that the victim and accused were unknown to each other. In the light of this fact, it was absolutely necessary for the prosecution to prove the identity of the Appellants/Applicants herein to be the preparator of the crime. In this regard *prima facie* consideration of the evidence on record indicates that the victim has candidly admitted to have not attended any procedure of identification of the accused during the course of the investigation. The learned Trial Court has also discarded the identification parade conducted during the course of investigation. The Trial Court

however, has accepted the identification of accused on the basis of the photographs affixed on arrest forms. The Accused have denied their involvement in the crime during the course of the Trial and hence it was necessary for the Trial Court to ensure that there is proper identification of the Accused in the Court.

9. On the basis of submission made across the bar by counsel appearing for both sides, it is clear that even in the Court there is no identification of the accused done by the victim even in the Court. The identification is claimed on the basis of the photograph shown to the victim on the arrest forms and it would be arguable point, when such identification would be enough for maintaining their conviction. In the light of these facts, evidence of witness Imran indicates that the incident claimed by the victim has not occurred. All these facts clearly indicate that the Appellants/Applicants have reasonable case of success during the hearing of the Appeal. The Appeals are not likely to be taken up for hearing in short period of time and Appeal may become infructuous, if the substantive sentence is not suspended and the Appellants/Applicants are not enlarged

on bail.

10. In response to the apprehension raised by the learned counsel for Respondent No.2-victim, the learned counsel for the Appellants/Applicants on instructions make statement that the Appellants/Applicants would not enter jurisdiction of City of Mumbai till decision of Appeal. This statement is accepted as an undertaking to this Court. This takes care of the apprehension of victim. There is nothing on record to indicate that the Appellants/Applicants were having any criminal history behind them. They were not likely flee from justice in the result following order.

ORDER

(i) The substantive sentence imposed on the Appellants/Applicants by order dated 31st January 2025 passed in POSCO Case No.509 of 2020 stands suspended till decision of the Appeal.

(ii) The Appellants-Accused-Bhagirath @ Rock Kishan Jethe and Sunny Ramesh Patil @

Sunya be enlarged on bail on furnishing PR Bond of Rs.15,000/- with one surety each in the like amount.

(iii) As voluntarily undertaken the Appellants-Applicants shall not enter the jurisdiction of City of Mumbai till decision of Appeal and shall not contact victim in any manner whatsoever.

(iv) In breach of the condition of bail would result into forthwith vacation of the present order and that Appellants/Applicants shall undergo remaining sentence.

(R.M. JOSHI, J.)