

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 2219 OF 2025
IN
CRIMINAL APPEAL NO. 650 OF 2025

Vikas Dhondu Khamkar

... Applicant

versus

The State of Maharashtra & Anr.

.... Respondents

.....

Mr. Laxman R. Shahapur a/w. Mr. Bhimanna N., Ms. Reshma Chavan,
Menisa V. Ms. Deepalli Bobade, Advocates for the Applicant.

Mr. Mayur S. Sonavane, APP for the State.

Ms. Vilasini Balasubramanian, Advocate for Respondent No.2.

PSI – S.R.Kanadkhedkar, Parksite police station present.

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CORAM : R. M. JOSHI, J.

DATE : 24th NOVEMBER, 2025.

P.C. :

1. This application is for suspension of sentence in connection with Judgment and Order dated 24.04.2025 passed in POCSO Special Case No. 1516 of 2022 passed by Special Court, whereby the appellant is sentenced to suffer 5 years rigorous imprisonment with fine.

2. At the outset, learned counsel for the appellant states that the appellant has undergone more than 3 years of sentence and since the appeal is not likely to be heard in a short period of time the appeal will

become infructuous if he not enlarged on bail. On merit it is his submission that the possibility of false implication of the appellant is not ruled out in view of the material discrepancies in the evidence led before the Trial Court. In this regard, he drew attention of the Court to the statement of victim as well as her mother recorded before the police and the substantive evidence before the Court.

3. Learned APP and learned counsel for respondent No.2 opposed the application. It is the contention of learned counsel for the respondent No.2 that the victim was aged about 3 years and hence the discrepancy if any occurred in her evidence cannot be said to be fatal to the case of prosecution. It is submitted that the Court is not expected to consider such variance in the testimony at the stage of suspension of sentence. It is also argued that even if the statement of the victim before the Trial Court is accepted, the act of touching to her private part amounts to have no offence and for which there is rightly conviction is recorded against the appellant.

4. There is no dispute about the fact that the appellant has undergone more than half of the sentence imposed against him. Needless to say that if there is unimpeachable evidence of victim, without seeking corroboration the testimony of the victim can become sole ground for conviction of the accused. It is however necessary to take note that even if

the concession is required to be given to the victim for any variance, owing to her age, no such concession could be extended in respect of testimony of the mother of the victim who also gives a different version of the incident all together. The said discrepancy goes to root of the matter and it could be argued that the evidence is not reliable to record conviction. This glaring issue cannot be ignored even at this stage. Having regard to these said facts it cannot be said that the appellant has no case to make out during the final hearing of the appeal. He has already undergone more than half sentence. The appellant has no criminal history behind him. learned counsel for the appellant, on instructions makes statement that he will not enter within the local jurisdiction of Parksite police station till decision of the appeal. The statement is accepted as undertaking. This takes care of the apprehension of the victim if any.

5. In view of above following order:

ORDER

- (i) The Application is allowed.
- (ii) The substantive sentence imposed against the accused by the impugned Judgment and Order dated 24.04.2025 passed in POCSO Special Case No. 1516 of 2022 stands suspended.
- (iii) The appellant be enlarged on bail on furnishing

P.R.Bond of Rs.15,000/- with one surety in the like amount.

(iv) Breach of undertaking would result in vacating this order forthwith.

6. The Interim Application is disposed of.

(R. M. JOSHI, J.)