

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

**INTERIM APPLICATION NO.2330 OF 2025
IN
CRIMINAL APPEAL NO. 674 OF 2025**

Omkar Ashruba Giri Appellant

V/s.

The State of Maharashtra & Anr. Respondents

Mr. Ratan L. Adhe, for the Applicant.

Mr. C.D.Mali, APP for the State.

Mr. Hrishikesh P. Giri a/w. Mr. Rajesh Gangale, Advocate for Respondent No.2.

CORAM : R.M. JOSHI, J.

DATE : 7th NOVEMBER 2025

PC:-

1. Heard learned counsels for both sides.
2. This application is for suspension of substantive sentence and enlargement of the applicant convict on bail during the pendency of the appeal. The appellant is sentenced to suffer imprisonment for 10 years in Special Case No.354 of 2022 for the offence punishable under Section 376(2)(n) the Indian Penal Code and in view of Section 8 and 12 of Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act").
3. At the outset, learned counsel for the appellant submits that

the victim who is now major as well as maternal aunt of the victim who is informant have no objection for enlargement of the appellant on bail. On merit it is his submission that even if it is accepted for the sake of argument that the victim was aged of 17 years 6 months at the date of incident, this is case of consensual sexual relation between the victim and the appellant and having regard to the age of maturity, there would be good case on merits. In this regard it is his submission that before the Medical Officer history was given by the victim when it was not claimed by her about any forcible sexual relations being established by the appellant with her. It is submitted that the appellant has undergone three years sentence and considering the fact that the appeal cannot be heard and decided in near future hence application be allowed to prevent appeal becoming infructuous.

4. Learned counsel for the victim records no objection after obtaining instructions from the victim who is present before the Court. He has also placed on record filed the affidavit of victim indicating that she is aged of 21 years now.

5. Learned APP opposed the application by contending that there is evidence on record to indicate victim to be minor at the time of occurrence of the incident. It is his submission in such circumstances

the consent becomes immaterial. By referring to the evidence of victim it is submitted the victim has never accepted any consensual relations.

6. Though the victim before the Trial Court has not accepted any consensual relationship, the statement made earlier by the victim do not indicate about the forcible relationship between them. The learned Trial Court has convicted the accused by holding that the relationship between the appellant and victim was forcible in nature which is in ignorance of other evidence on record. This Court finds prima facie substance in the contention of learned counsel for the appellant that the victim has not disclosed forcible physical relationship to the Medical Officer and as such he could not a reasonable case to be made out during the hearing of the appeal finally. Appeal cannot be decided in near future. Most importantly the informant as well as the victim who is now major have recorded consent for allowing the application.

7. At this stage, learned APP makes grievance that if the victim is permitted to give consent for enlargement of convict on bail or even records consent for allowing the appeal, it amounts to abuse of process of law. It is his further submission that undeserving persons cannot be permitted to receive compensation and this conduct of the

victim needs to be taken into consideration. These submissions will be taken into account while deciding the appeal finally.

8. In view of above, following order is passed :

ORDER

- i. The application stands allowed.
- ii. The substantive sentence imposed against the accused by the impugned Judgment and Order dated 29.05.2025 passed by the Additional Sessions Judge, Vadgaon Maval, Dist. Pune in Special Case No. 354 of 2022 stands suspended till the decision of the appeal.
- iii. The appellant be enlarged on bail on furnishing one surety in the like amount of Rs.15,000/- with one surety in the like amount.
- iv. Appeal before the Trial Court.

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(R.M. JOSHI, J.)