

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

**INTERIM APPLICATION NO.2335 OF 2025
IN
CRIMINAL APPEAL NO.1778 OF 2019**

Dilip Ramsharan Varma

.... Applicant

versus

The State of Maharashtra & Anr.

.... Respondents

.....

- Mr. Amit Mane, Advocate for Applicant.
- Mr. Vinit A. Kulkarni, APP for the State/Respondent.
- Dr. Dhruvi M. Kapadia, Advocate for Respondent No.2/Amicus Curiae.

**CORAM : SARANG V. KOTWAL &
ADVAIT M. SETHNA, JJ.
DATE : 21st AUGUST, 2025**

P.C. :

1. This is an application for bail pending final disposal of the Appeal preferred by the Applicant against the Judgment and Order dated 14/06/2018 passed by the learned Additional Sessions Judge for POCSO, Greater Mumbai, in POCSO Special Case No.188 of 2014.

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2. The Applicant was convicted for commission of the

offence punishable u/s 376(2), 354 of the Indian Penal Code and u/s 6, 8 and 10 of the Protection of Children from Sexual Offences Act, 2012, and was sentenced to suffer life imprisonment and to pay a fine of Rs.10,000/- and in default of payment of fine to suffer rigorous imprisonment for four months.

3. Heard Mr. Amit Mane, learned counsel for the Applicant, Dr. Dhruti M. Kapadia, learned counsel for the Respondent No.2 and Mr. Vinit A. Kulkarni, learned APP for the State.

4. The Appeal is already admitted and is pending final disposal. The Applicant had earlier preferred an application for bail vide Interim Application No.3768 of 2024 in Criminal Appeal No.1778 of 2019. At that time, the application was not pressed, but liberty was granted to apply afresh, if the Appeal was not heard before May 2025. Pursuant to that liberty granted to the Applicant, we have heard this application afresh for consideration of bail.

5. The prosecution case is that the Applicant was the real brother of the victim. The period of offence was between 2012 to 18/03/2014. The first of these incidents had occurred when the victim was 13 years of age. It is the prosecution case that the Applicant established forcible physical relations with the victim, when there was no one in the house. Their parents had separated. Their father was mostly busy in earning for livelihood. Her four brothers and two sisters including the victim and the Applicant were staying together. Her father was residing at UP and their mother had married somebody else. The date of birth of the victim was 01/02/2000. There is no dispute about her age and there is no dispute that she was a minor during that period. The prosecution case is that during an awareness programme conducted in her school, she came to know that a complaint could be made against this behaviour of her brother. According to the prosecution case, she lodged an FIR with the help and guidance of a Social Worker. The investigation was carried out. The Applicant was arrested. The victim was sent for medical examination. At the conclusion of the investigation, the

charge-sheet was filed. The Applicant faced the trial and ultimately was convicted and sentenced as mentioned earlier.

6. Learned counsel for the Applicant submitted that the most important evidence in this case is that of the victim herself. She has not supported the prosecution case. The contradictions from her statement recorded u/s 164 of Cr.P.C. are not put to her and therefore that statement cannot be used against the Applicant. He submitted that there are indications that the victim was angry with the Applicant because he was opposing her friendship with a boy. Out of frustration and anger, this false FIR was lodged by her.

7. Learned counsel further submitted that the Applicant is in custody from 18/03/2014. The Appeal is not likely to be decided in near future. Therefore, considering the liberty granted by another Division Bench of this Court, his Bail Application may be favourably considered.

8. Learned APP as well as learned counsel for the Respondent No.2 opposed these submissions.

9. We have considered these submissions. With the help of learned counsel for parties, we have perused the evidence on record. As rightly submitted by the learned counsel for the Applicant, the most important evidence in this case is that of the victim herself. She has not supported the prosecution case at all. In fact, she has denied each and every statement made in the FIR, which was incriminating against the Applicant. In the FIR she has described at least 3 to 4 specific incidents where the Applicant is supposed to have committed rape on her. But in her substantive evidence before the Court, she denied having made any such statements in her FIR. In the cross-examination conducted on behalf of the Applicant, she admitted that the Applicant had slapped her once because she was roaming around with one boy. She had also admitted that she had physical relations with that boy. She further stated that the social worker had just asked her to answer 'Yes' to all the questions put to her by the Magistrate.

10. At this stage, considering that the Applicant is in

custody for more than 11 years and the fact that the victim has not supported the prosecution case, this background will have to be considered seriously. Learned counsel for the Applicant is also right in submitting that the victim P.W.1 was never asked any questions about her contrary statement u/s 164 of Cr.P.C. Therefore, the contradictions from that statement cannot be used by the prosecution in favour of the prosecution and against the Applicant.

11. Considering this aspect, particularly taking into account the fact that the Applicant is in custody for more than 11 years in spite of the fact that the victim has not supported the prosecution case, he has made out a case for grant of bail during pendency of his Appeal.

12. Hence, the following order :

ORDER

- (i) During pendency and final disposal of the Criminal Appeal No.1778 of 2019, the Applicant is directed to be released on bail on his furnishing

P.R. bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand only), with one or two sureties in the like amount.

(ii) Interim Application stands disposed of accordingly.

(ADVAIT M. SETHNA, J.)

(SARANG V. KOTWAL, J.)