

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 2433 OF 2025

IN

CRIMINAL APPEAL NO. 941 OF 2025

Layis Mohammad @ Langada Munna Sharif Khan ... Appellant

Versus

State of Maharashtra & Anr. ... Respondents

.....

Mr. Ramprasad V. Gupta a/w. Mr. Rohit Vaishya and Ms. Shraddha Rathod, Advocates for the Appellant.

Mr. H. J. Dedhia, APP for the State.

Ms. Aishwarya Sharma, Advocate for Respondent No.2 in IA/2433/2025.

Mr. Deepak Kushwaha, Advocate for the Appellant in Cri. Appeal/897/2023 and Cri. Appeal/922/2023.

Mr. Sandeep Bhupat Satkar, Advocate for Respondent No.2 in Cri. Appeal/897/2023 and Cri. Appeal/922/2023.

CORAM : R. M. JOSHI, J.

DATED : 20th NOVEMBER, 2025.

P.C. :

1. During the course of the hearing of application for suspension of substantive sentence it is brought to the notice of this Court that on behalf of the appellant i.e. original accused No.1 no cross examination of PW-1 to PW-6 has been conducted. Similarly the cross examination conducted by the co-accused was adopted by the Advocate appearing on behalf of the appellant in respect of PW-1 to 9 and 11.

2. Learned counsel for the appellant submits that the appellant was not represented before the learned Trial Court of the lawyer of his choice but

the appointment was done to represent him by way of legal aid. It is his submission that in case the Advocate for the appellant was not present, the learned Trial Court ought to have appointed another Advocate in order to ensure order that the opportunity is defence is given to the appellant/accused. It is his submission that since since this has not been done and material witnesses were not cross examined, it is a fit case for setting aside the impugned Judgment and Order of conviction and then to remand the matter for the purpose cross examination of witnesses by the appellant on behalf of the appellant herein.

3. Learned APP and learned counsel for respondent No.2 though did not dispute the fact that there was no cross examination of these witnesses, according to them it was for the accused to ensure that the cross examination of all witnesses is conducted and now no grievance can be allowed to be made in that regard.

4. This argument could have been justified provided the accused was represented by Advocate of his choice. Here in this case since admittedly the Advocate was appointed by way of legal aid, it was incumbent on the part of the Trial Court to ensure that during the trial the accused is represented effectively. Needless to say that in case of serious offences, the Trial Court ought to have been more vigilant in this regard.

5. The offences shall against the accused are serious in nature i.e.

punishable under Section 376 of Indian Penal Code and Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short “POCSO Act”). Having regard to the fact that the apparently appellant was not represented before the Trial Court and no cross examination of witnesses is done, the same has resulted in miscarriage of justice. Hence, this Court finds it appropriate to give an opportunity to the appellant to cross examine the witnesses who were not cross examined by the appointed counsel.

6. Though learned counsel for the appellant seeks setting aside of the impugned Judgment and Order and then to remand the matter, this Court finds that during the trial no such request was made and hence at this stage it would not be appropriate to set aside the Judgment and Order as it would not be appropriate to go into merit of case and record any findings. Instead ends of justice would meet if the appellant is given an opportunity to cross examine the above stated witnesses and the Trial Court is called upon to record finding upon such evidence brought on record. The findings recorded by Trial Court be forwarded to this Court to enable this Court to consider and decide the appeal in proper perspective.

7. Since the trial is of year 2019, the Trial Court to complete the exercise of permitting appellant to cross examine witnesses from PW-1 to PW-9 and PW-11 and recording findings within a period of 3 months from

1st December, 2025. It is clarified that no extension on whatsoever ground shall be given.

8. Advocate Mr. Gupta makes statement that he would appear before the Trial Court on behalf of the appellant /accused. It is clarified in case appellant is not represented before the Trial Court on any day without any justified reason, it would be open for the Trial Court to close the evidence of such witness who is present before the Court.

9. The Trial Court not to get influenced with the fact that the appeal is kept pending and it would be duty of the Trial Court to record finding on the basis of evidence brought on record on the cross examination conducted of these witnesses by appellant.

10. Appeal is removed from board with liberty to circulate the appeal once the report is received from Trial Court.

(R. M. JOSHI, J.)