

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.2520 OF 2025
IN
CRIMINAL APPEAL NO. 936 OF 2025

Nilesh Bhimrao @ Baliram Aachale Applicant

V/s.

State of Maharashtra & Anr. Respondents

Mr.Prasad Arun Kamthe, for the Applicant/Appellant.

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

Ms.Komal Sinha, for Respondent No.2.

CORAM : R.M. JOSHI, J.

DATE : 6th NOVEMBER 2025

P.C:-

. Heard both sides.

2. This Application is for suspension of substantive sentences imposed against the Appellant by judgment and order dated 27th March 2025 passed in Special POSCO Case No.150 of 2018, whereby the Appellant is sentenced to suffer RI for a term of five years and to pay fine of Rs.10,000/- for the offences punishable under Section 10 of the Act and for enlargement of Appellant on bail. He is also convicted for the

offence punishable under Section 12 and sentenced to suffer RI for 10 years with fine.

3. The learned counsel for the Applicant to draw attention of this Court to the First Information Report which came to be lodged on 21st February 2018, in respect of the incident occurred on 19th February 2018. It is his submission that as per the case of the prosecution the alleged incident has occurred in the shop of the father of the victim and immediately after the occurrence of thereof she met her father. It is his submission that in spite of the fact that the father has material a relevant witness before the Trial Court, he was not examined and there is no explanation for his non-examination.

4. It is his argument that the only independent witness in this case is PW-4 in whose presences there was alleged identification of the Appellant by the victim but he has not supported the case of prosecution and the prosecution has not examined other two witnesses in whose presences the alleged identification was done. He further submits that the doubt is created with regard to the testimony of the mother of the

victim, as regard to the acquaintance of the Appellant. At the first instance she claims that when the accused was shown to the victim, she disclosed his name meaning accused not known to them, however in the cross-examination she admits previous acquaintance of the Accused with her husband. In these amongst other submission, it is claimed that Appellant was reasonable chance of success in Appeal and as the Appeal is not likely to be heard shortly, it shall become infructuous.

5. The learned counsel for Respondent No.2-victim as well as APP opposed the Application. At the outset, it is argued that the offences is grave and serious in nature as the same has been committed against a girls aged about 7 years. It is argued that the conviction can be recorded on sole testimony of the victim and as such examination of any independent witness is not necessary. It is argued that there are no inconsistencies in the statement of the victim and her mother.

6. It is argued on behalf of the learned counsel for Respondent No.2 that merely because the other two independent witnesses are not examined as to the identification

of the accused, there is identification of the accused before the Court during the trial. It is submitted that on the basis of the lapses on the part of the prosecution to led evidence no benefit could be given thereof to the Accused who has committed serious nature of crime.

7. The law on the point of suspension of sentence and enlargement of the Accused on bail is fairly settled to say that if the convict makes out a reasonable case of success during the final hearing of the Appeal, and where the substantive sentence is for fixed/limited period, the Court is required to exercise the discretion of the enlargement of the Accused/convict on bail. In case the Appeal is not likely to be taken up for hearing in near future.

8. Considering the pendency it is not possible that the present Appeal could taken up for hearing in reasonable time. This Court will have to see as to whether any *prima facie* case is made out by the Appellant for any chance of success in the Appeal.

9. This Court is conscious of the fact that in

appropriate cases a reliable sole testimony of the victim would be sufficient to convict an Accused, requiring no further corroboration. However, the same needs to be considered in the light of the nature of evidence and other facts and circumstances prevailing therein. In this case the incident has occurred on 19th February 2018. As per case of prosecution immediately within few minutes of the occurrence of the incident the victim had met her father, however he was not examined before Trial Court and there is no explanation for non examination of said material witness. In respect of the incident on 19th February 2018 the report came to be lodged on 21st February 2018 on the premise of identification of the Appellant as the preparator of the crime in presences of three independent witness who in fact were the friends of the father of the victim. PW-4 is one of the said three witnesses who has not supported the case of prosecution. There is nothing on record to indicate as what prevented the prosecution for examining the two remaining witnesses in order to prove the identification done at that time. Even though the identification

of the Appellant has been done in the Court, the same has been done after five years of the occurrence of the incident. Having regard to the age of the victim, as rightly argued on behalf of the Appellant, it may be difficult to accept such identification. Having regard to the afore-stated fact, substance in contention of counsel for Appellant that a reasonable case could be made out by the Appellant for a success in the Appeal.

10. Admittedly, there are no criminal antecedents against the Appellant. During the course of the trial he was on bail. There is no abuse of liberty. In view of the above, the Application stands allowed.

ORDER

(i) The substantive sentence imposed against the Appellant-Accused by judgment and order dated 27th March 2025 passed in Special POSCO Case No.150 of 2018 stands suspended till the decision of the Appeal.

(ii) The Appellant-Nilesh Bhimrao @ Baliram Aachale be enlarged on bail on furnishing

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

(iii) Bail before the Trial Court.

(R.M. JOSHI, J.)