

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.2663 OF 2025
IN
CRIMINAL APPEAL NO. 812 OF 2025

Ambadas Vishnu Jadhav Applicant

V/s.

State of Maharashtra & Anr. Respondents

Mr.Sahana Manjesh, for the Applicant/Appellant.
Mr.Hitendra J. Dedhia, APP, for the Respondent-State.

CORAM : R.M. JOSHI, J.

DATE : 6th NOVEMBER 2025

P.C:-

. The learned counsel for both sides are heard.

2. This Application is for suspension of substantial sentence for 20 years for the offence punishable under Section 4 of the Protection of Children From Sexual Offence Act, 2012 (for short 'POCSO Act') with fine and RI for five years for the offence punishable under Section 366A. The Trial Court has directed both sentences to be run concurrently.

3. At the outset, the learned counsel for the

Applicant/Appellant submits that during the course of the trial the Applicant was not granted bail and as a result of which for last 8 years he is behind bar. On merit it is her submission that entire burden is upon the prosecution to prove that the victim is minor and herein this case there is no evidence to indicate that the victim is minor. It is her further submission that in view of the evidence of victim herself the birth certificate is available and it is ought to have been place on record primary evidence to prove the age of the victim, and for production of the same, adverse inference needs to be drawn. It is further argued that the victim has given history to the medical officer about she having love relations with the Accused and that she eloped with him and it is claimed therein that it is consensual sexual relation between them. According to the learned counsel for the Appellant in such circumstances, the conviction would not be sustained and that Appellant has good case on merits.

4. The learned counsel for the Respondent-State No.2 as well as APP opposed the Application. It is argued that the contradiction sought to be canvassed are not proved through the

Investigating Officer and as such the said contradictions in the evidence of victim become immaterial. The attention of the Court is also sought to be drawn to the statement of the victim recorded on under Section 154 Cr.P.C., which according to counsel indicates that the physical relations were not consensual. It is submitted that having regard to the serious nature of the offence it is a fit case for enlargement of the Accused on bail.

5. There cannot be any dispute made with regard to the propositions sought to be canvassed on behalf of the counsel for the Appellant that the burden would always be upon the prosecution to prove that the victim was minor and about incapable of giving valid consent for sexual relations. The existence of Birth Certificate and its non production on records would becomes material time.

6. *Prima facie* perusal on the record indicates that victim has accepted the fact of her birth certificate being available. However, the said birth certificate has not been placed on record. In any case, the ossification test conducted to determine the age of the victim also shows that her age could between 16 to 18

years. Needless to say that margin of plus two years needs to be considered and by accepting the same it could be argued during Appeal that age of victim is required to be considered above 18 years at the relevant time.

7. Now question arises as to whether this is a case of forcible sexual relations. The evidence of the Medical Officer indicates that, the victim and Appellant surrender themselves to the Police and immediately after she was brought for medical examination she disclosed to the Medical Officer about there being love relations between them and consensual sexual relations too. Having regard to this fact that this Court finds no hesitation to accept the contention of the counsel for the Appellant that the Appellant/Applicant could have a good case on merit seeking acquittal. In view of these facts, coupled with the incarceration of the Appellant for last 8 years, Application deserves to be allowed.

8. Accordingly, the Application stands allowed in the following terms.

ORDER

- (i) The substantive sentence imposed on the Appellant/Applicant by judgment dated 20th December 2024 passed by the learned Additional Sessions Judge, Pune in Special Case No.80 of 2022, stands suspended till the decision of the Appeal.
- (ii) The Appellant/Applicant-Ambadas Vishnu Jadhav be released forthwith on bail initially on furnishing cash surety of Rs.15,000/- for the period of one month of his release. After one month the Appellant to furnish PR bond and one surety in the like amount of Rs.15,000/-.
- (iii) Bail before the Trial Court.

(R.M. JOSHI, J.)