

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

**INTERIM APPLICATION NO.2749 OF 2025
IN
CRIMINAL APPEAL NO.765 OF 2025**

Vilas Bansi Gangurde

.... Applicant

versus

The State of Maharashtra & Anr.

.... Respondents

.....

- Mr. Chetan H. Deshmukh, Advocate for Applicant.
- Mr. Pankaj P. Devkar, APP for the State/Respondent.
- Ms. Seema Dighe, Advocate for Respondent No.2.

**CORAM : SARANG V. KOTWAL, J.
DATE : 31st JULY, 2025**

P.C. :

1. This is an application for bail pending final disposal of the Appeal preferred by the Applicant. The Applicant has challenged the Judgment and Order dated 11/07/2025 passed by the learned Additional Sessions Judge, in Special (POCSO) Case No.266/2023. The Applicant was convicted for the offence punishable u/s 363, 376 of the Indian Penal Code and u/s 4 of the Protection of Children from Sexual Offences Act, 2012.

The major sentenced imposed on him was rigorous

imprisonment for 10 years and to pay a fine of Rs.500/- and in default of payment of fine to suffer simple imprisonment for 15 days.

2. Heard Mr. Chetan H. Deshmukh, learned counsel for the Applicant, Ms. Seema Dighe, learned counsel for the Respondent No.2 and Mr. Pankaj P. Devkar, learned APP for the State.

3. The prosecution case is that the victim's mother had lodged a complaint to the police station that she was not found from 25/10/2021. C.R.No.422/2021 was registered at Harsul Police Station u/s 363, 376 of the Indian Penal Code. The investigation was carried out. The Applicant was found on 23/07/2021. He was arrested. The prosecution case is that in between, the Applicant had married the victim and subsequently they had a child from their marriage. According to the prosecution case, she was a minor at that time and therefore, the Applicant had committed this offence. He was tried for the same. During the trial, the prosecution examined 4 witnesses

and the Applicant examined 2 witnesses in his defence. The victim and her mother did not support the prosecution case. But the learned Judge relied on the evidence regarding her age proof and the DNA report, which is produced on record. He convicted and sentenced the Applicant on the basis of the evidence.

4. The learned counsel for the Applicant submitted that there is no evidence against the Applicant. The victim and her mother have not supported the case. The age of the victim is not proved by the prosecution. Therefore, there is no evidence to show that she was a minor at that point of time. The Applicant was on bail during trial. He was residing happily with the victim in this case and their daughter. Therefore, he deserves to be released on bail.
5. Learned APP left the decision of this Bail Application to the discretion of the Court.
6. Learned counsel for the Respondent No.2, the victim in this case, has no objection for grant of bail to the Applicant. In

fact, she insisted that the bail should be granted to the Applicant.

7. I have considered these submissions. As submitted by the learned counsel for the Applicant, the victim and her mother, who were examined as P.W.1 and P.W.2 respectively, have not supported the prosecution case. The victim who was examined as P.W.1 has stated that her date of birth was 27/02/2003. Therefore, on 25/10/2021, she was above 18 years of age. The Investigating Officer, API Ganesh Mhaske (P.W.3) has deposed that he had not got done the ossification test of the victim. There is no radiological test of the victim.

8. The prosecution has relied on the evidence of P.W.4 regarding P.W.1's date of birth. P.W.4 was the Principal at the college, where the victim had studied. As per the record, the victim's date of birth was 27/02/2005. He had referred to the college leaving certificate. He could not tell the name of the employee, who had entered her date of birth. There is no evidence brought on record by the prosecution to show from

where this date of birth was entered in the college register. There is no age proof from her school and in particular her first school showing her date of birth. Her birth certificate is not produced on record. Therefore, serious doubt is raised regarding date of birth of the victim. This aspect will have to be considered at the final hearing stage. However, for consideration of bail, sufficient doubt is created about the prosecution case. Two defence witnesses i.e. the uncle and father of the Applicant has supported its case. According to them, the victim and the Applicant got married after she had completed her 18 years of age. The DNA report is produced before the Court at Ex.23. However, there is no record as to how it was produced and whether the accused/the Applicant was given sufficient notice about this report.

9. Considering all these aspects, I find that there is sufficient doubt created about the prosecution case. It will be finally decided at the stage of final hearing. In the meantime, it would not be just to deny bail to the Applicant. He has already married P.W.1. They have a child from their marriage. They

are living happily together. In this situation, I am inclined to grant bail to the Applicant, pending his Appeal.

10. Hence, the following order :

ORDER

- (i) During pendency and final disposal of the Criminal Appeal No.765 of 2025, 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.

(SARANG V. KOTWAL, J.)