

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 3915 OF 2025

IN

CRIMINAL APPEAL NO. 1049 OF 2025

Saiful @ Yoyo Shamima Shaikh

... Appellant

versus

State of Maharashtra & Anr.

.... Respondents

.....

Mr. Vivek Nishad, Advocate for the Appellant.

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

Mr. Raviraj Paramane, Advocate for Respondent No.2.

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CORAM : R. M. JOSHI, J.

DATE : 17th DECEMBER, 2025.

P.C. :

1. This application is for suspension of sentence and enlargement on bail in connection with C.R.No. 659 of 2017 registered with Bandra Police Station, Mumbai for the offences punishable under Section 235(2) of the Code of Criminal Procedure, 1973, for the offence punishable under Section 376 of the Indian Penal Code, 1860 and under Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act") passed in Judgment and Order dated 04.09.2025 in Sessions Case No. 144 of 2018 whereby the accused / appellant came to be

convicted for the offences punishable under Section 6 of the POCSO Act and sentenced to suffer rigorous imprisonment of 10 years with fine.

2. Learned counsel for the appellant submits that the appellant has fair chance of success in the appeal for the reason that the prosecution has failed to prove the age of the victim. It is his contention that in order to hold accused guilty for offence under the POCSO Act, the burden is on the prosecution to prove that the victim was minor at the relevant time. He drew attention of the Court to the cross examination of PW-4 who accept to be not the Author of the school record. He further pointed out admission of the victim in the cross examination indicating that on her pancard her date of birth is recorded as 16.01.1998. Thus it is his contention that this evidence is sufficient to hold that the victim was a major. On other aspects it is argued that from the evidence of victim itself it is clear that it is the case of consensual physical relationship.

3. Learned APP and learned counsel for respondent No.2 opposed the application. It is their contention that through evidence of PW-4 age of the victim is proved. It is also argued that the victim has consistently deposed before the Trial Court about the sexual relationship established by the accused with her and since she was minor, her consent is immaterial.

4. The Court as to see at this stage has to see whether there would be any fair chance of the success for the appellant in the appeal. Prima facie

perusal of the record indicates that PW-4 though relies upon the school record, he is not author of the said document. Apart from this, from her testimony it can be seen that the entries in the school record were taken on the basis of the birth certificate of the victim. Thus, it is clear that birth certificate is very well available. However, the same is not placed before the Trial Court. In such circumstances, it would be open for the defence to call upon this Court to draw adverse inference against the prosecution. Moreover, the victim admits date of birth recorded on pan card, which shows that she could be major at relevant time. Perusal of the evidence of victim before the Trial Court indicates that the relationship between them was consensual in nature and since there was a refusal on the part of the accused to marry victim, report came to be lodged. Thus, it can be said that the appellant could have a fair chance of success in the appeal. The appeal is not likely to be taken up for hearing in a short period of time and hence appeal would become infructuous. Appellant has no criminal history and is not likely to flee from justice.

5. In view of above, following order:

ORDER

- (i) The Substantive sentence imposed against the appellant by Judgment and Order dated 04.09.2025 passed in Case No. 144 of 2018 stands suspended.

(ii) The appellant be enlarged on bail on furnishing P.R. Bond of Rs.15,000/- with one surety in the like amount.

(iii) Appellant not to contact victim directly or indirectly till decision of appeal. Breach of condition of bail would lead to cancellation thereof forthwith.

6. The Interim Application is disposed of.

(R. M. JOSHI, J.)