

rajshree

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION (ALS) (ST) NO.21679 OF 2025
WITH
INTERIM APPLICATION NO.4044 OF 2025
IN
CRIMINAL APPLICATION (ALS)(ST) NO.21679 OF 2025**

The State of Maharashtra ... Applicant
Versus
Aakash Subhash Devkar & Anr. ... Respondents.

Ms.Sangeeta D. Shinde, APP for the State-Applicant.

**CORAM : BHARATI DANGRE &
SHYAM C. CHANDAK, JJ.**

DATE : 17th NOVEMBER, 2025

ORDER (PER BHARATI DANGRE, J) :-

1. By the present Application filed under Section 419(3) of The Bhartiya Nagrik Suraksha Sanhita, 2023 read with Rule 19 of Chapter XXVI of the Bombay High Court, Appellate Side Rules, 1960, the State seek leave to appeal as it has raised a challenge to the impugned Judgment and Order of acquittal dated 5th May, 2025 passed by the learned Special Judge under Protection of Children from Sexual Offences Act, 2012 (for short "the POCSO Act"), in Special (P) Case No.15/2022.

2. Heard the learned APP Ms. Sangeeta Shinde for the State and perused the impugned Judgment placed before the Court alongwith the notes of evidence placed on record.

3. The accused, aged 19 years faced an accusation under Section 354(1)(i) and 506 of the Indian Penal Code and Section 7 punishable under Section 8 and Section 11 punishable under Section 12 of the POCSO Act, 2012.

As per the prosecution case the mother of the victim girl lodged a complaint alleging that victim(S) aged 7 is her daughter and she alongwith the daughter of their family friend (SM) aged 6 years were bursting crackers in the basement and while returning home the accused accompanied them under the pretext that he would drop the girls home.

SM, the daughter of their friend disclosed on the next day of the incident,that while returning home the accused asked her whether they know about doctor doctor game and he caught hold of her alongwith other victim girl from behind and inappropriately touched them and realising something is wrong, she pushed him. Thereafter, he pulled victim S close to him and

pressed her breast and on feeling the discomfort, she also expressed desire to go home. While in lift, the accused threatened them by giving signal that they shall not report about the incident to anyone.

4. As per the case of the prosecution, on gathering such information from their friend, informant and her husband enquired with their own daughter and when she corroborated the version of the other victim girl, they approached the Police Station and lodged the report.

5. In support of the prosecution case, five witnesses were examined and the statement of accused was recorded under Section 313 of the Code of Criminal Procedure.

The Special Judge proceeded to determine the guilt of the accused as he was charged of sexually abusing the minor girls while he was working as watchman in the building and the stand adopted by him was very specific, that he helped the girls as they were found playing in the basement and by taking them by the lift, he dropped them in their house and he is falsely implicated in the case.

6. The Special Judge relied upon the testimony of PW 1, mother of the victim (S) which reflect that both the victims were minor at the time of incident.

PW 1 deposed that the accused was working as Watchman of the building and on the day of Diwali when their family friend visited their house with their daughter, the two girls went down to burst crackers and after one hour the accused came with them and told that they were going to E Wing, where there were dogs and therefore, he came to drop them. She referred to the narration of the mother of victim 2 who was informed by her daughter that accused caught hold of both of them from back side, moved his hand and pressed the breast of victim second and he repeated the act with even first victim and thereafter threatened them.

7. What is most relevant is the version of two victim girls.

PW 2 (Victim S) deposed that after burning crackers she alongwith her friend were crossing the basement and accused came there. She stated that there were dogs in the basement and he told them that he will drop them after a while. Then, he

asked them whether they know how to play doctor game and then the accused touched her badly and touched her breast. But she categorically deposed that he did not do anything with victim 2. When specifically asked by the Court as to what part of the body of the accused she was asked to touch and she responded by saying that main part.

In cross-examination she denied that no such incident had taken place.

PW 4, the other victim girl deposed that on account of Diwali she had visited her friend's house (PW 2) and after bursting crackers when they were returning home, the watchman touched her badly and by pulling her hand, he asked her to touch his private part, and he lifted her frock up from back and pulled her close to him. She denied the suggestion that she was being tutored by her mother to give such statement.

8. The aforesaid inconsistency in the version of two witnesses was noted by the learned Special Judge and he also noted the contradictions and omissions by comparing the said statement of victim S given to the police and found that there are improvements in her version before the Court.

As far as victim SM is concerned, he noticed that there is consistency in her statement recorded under Section 161 of the Cr.P.C. and her version before the Court, as these facts are not part of the complaint (Exhibit 26) and the mother of the victim who lodged the report had not stated that accused had asked the victim to touch his private part, lifted her frock and took her close to him.

9. The learned Judge thus noted that there is variance in the complaint and statement of the victim. Further it was noted that the evidence of PW 1 and PW 3 on the point of sexual assault is hearsay and when PW 4 informed about the incident to her mother (PW 3) she informed it to PW 1 and, therefore, the report was lodged.

Though evidence of PW 1 and PW 3 was not liable to be completely discarded, however, since the testimony of the victim did not inspire confidence and they gave different versions in absence of any corroboration it was found that the guilt of the accused is not established by prosecution conclusively. This resulted in acquittal of the accused, which is sought to be challenged before us.

10. On appreciating the evidence and on perusal of the impugned Judgment, we see no reasons to interfere as we find that the conclusion drawn by the learned Special Judge is based on appreciation of the evidence laid before him and in the wake of the inconsistency in the version of PW 2 and PW 4 which surfaced before him, he was persuaded to conclude that the prosecution was not able to establish its case beyond reasonable doubt and acquitted the accused.

As the impugned Judgment do not suffer from any legal infirmity and the view taken is a plausible view, based on evidence lead by prosecution, we refuse the leave as prayed by the prosecution.

11. In the wake of above, Criminal Application stands dismissed. In the wake of dismissal of Criminal Application, Interim Application do not survive and the same is also disposed off.

(SHYAM C. CHANDAK, J.)

(BHARATI DANGRE, J.)