

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 4175 OF 2024
IN
CRIMINAL APPEAL NO. 1192 OF 2024

Kiran S/o. Premji Patel	...Applicant
<i>Versus</i>	
The Union Territory of Daman & Diu and Dadra & Nagar Haveli and Ors.	...Respondents

Mr. Pawan Mali, for the Applicant.
Mr. Ashwin Thool, Adv. Archishmati Chandramore and Adv. Ayush
Singh, for the Respondent No.1.
Mrs. Suvarna Yadav, Through Legal Aid appointed for the
Respondent Mo.2.
Mr. Arfan Sait, APP, for the Respondent No.3/State.

CORAM: R. M. JOSHI, J.

DATED: 11th FEBRUARY, 2026.

PC:-

1. Heard.

2. This application is for enlargement of appellant on bail and suspension of sentence in connection with Judgment and Order dated 26th March, 2021, passed in POCSO Spl. Case No. 5 of 2020, wherein the appellant came to be convicted for the offences punishable under Sections 323, 342, 376-AB and 506-II of the Indian Penal Code and under Section 6 of Protection of Children

from Sexual Offences Act, 2012 (for short “POCSO Act”) and sentenced to suffer rigorous imprisonment of 20 years with fine.

3. Learned Counsel for the appellant submits that the evidence on record is wholly inconsistent and hence not sufficient in order to convict the appellant/ accused. He drew attention of this Court to the evidence of victim and informant and evidence about C.C.T.V. footage. According to him evidence of C.C.T.V. footage is completely contradictory to the history recorded to the medical officer. It is his contention that the victim has categorically stated before medical officer about unknown person having forcibly taken her to the place of sexual assault, however appellant is known to her and place of incident is house of appellant, when she used to visit frequently. He further drew attention of the Court to the history recorded by the medical officer wherein there is no statement given by the victim with regard to she being subjected to the penetrator sexual intercourse. In this regard reference is made to the evidence of medical officer wherein the medical officer is unable to say as to whether the hymen torn is recent or old one. Similarly admission is pointed out given by the medical officer indicating that due to excessive itching the possibility of redness on outer vaginal orifice is not ruled out. It is his submission that as regards to this nature of the evidence, the appellant has fair chances to success in appeal. According to him appeal is not likely to be heard in short time and hence appeal would become infructuous.

4. Ld. Special Counsel for Union Territory of Daman & Diu and Dadra Nagar Haveli and Ld. Counsel for the Respondent No.2 opposed the application. It is their contention that the victim is minor and owing to her age, the possibility of minor inconsistencies occurring in her evidence exist. Ld. Public Prosecutor specifically argued that since the history of the victim is recorded at about 2.00 a.m., and considering her age, the possibility of she having stated so incorrectly is not ruled out. It is his further argument that the statement of the victim before the Court is consistent with her statement recorded under Section 161 & 164 of Cr.P.C.. It is his submission that even if there are inconsistencies in substantive evidence compared to the history given to the medical officer, her testimony cannot be discarded. To support this submission he seeks to place reliance on the binding precedent on next date.

5. Stand over to 13th February 2026.

(R. M. JOSHI, J.)

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