

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1236 OF 2024
WITH
INTERIM APPLICATION NO. 4793 OF 2024
WITH
INTERIM APPLICATION NO. 4792 OF 2024
IN
CRIMINAL APPEAL NO. 1236 OF 2024

Mohammed Jakir Hakul Mobin Shaikh ...Appellant
Versus
The State of Maharashtra and Anr. ...Respondents

Adv. R. R. Mishra a/w Hasan Shaikh, for the Appellant.
Mr. Arfan Sait, APP, for the Respondent-State.
Ms. Anuja Trilokekar (Through V.C.) a/w Adv. Pravin Mengane, for
Respondent No.2.

CORAM: R. M. JOSHI, J.

DATED: 11th FEBRUARY, 2026

PC:-

1. This application is for the suspension of sentence and enlargement of the appellant on bail in connection with Judgment and order dated 05.09.2024 passed in Special POCSO Case No. 129 of 2014, whereby the appellant came to be convicted for the offence punishable under Sections 376 (i) and 506 of IPC and sentenced to suffer ten years imprisonment with fine and default sentence.

2. Ld. Counsel for the appellant submits that the appellant till date has undergone actual sentence of four years and four months to be sufficient that, the appeal is not likely to be heard in a short period of time, and access to the appeal to become infructuous. On merit it is submitted that the evidence on record which indicates that for a long period, from 2008 till 2014, there was a consensual physical relationship between the informant and the appellant. It is his submission that in view of the same the allegations with regard to the rape could not be sustained. These on other amongst submissions we seek enlargement of the appellant on bail.

3. Ld. APP and Counsel for the Respondent No.2 opposed the said contention. Ld. APP has drawn attention of this court to the evidence of the victim wherein Para-3 of her examination-in-chief, she is specifically states the incident which have occurred which has just before the lodging of this First Information Report. It is pointed out that there is no cross-examination is conducted on said evidence of the victim. Ld. Counsel for the Respondent No.2 submits that there is evidence on record to show that the victim was minor at the time of occurrence of the incidence and as such the consent of minor is irrelevant for sexual relationship. It is her further submission that in view of the specific allegations against the appellant about the manner in which he was harassing the victim even after he got married in August-2014, raises apprehension in the mind of the victim that she will be harassed if the appellant is enlarged on bail.

4. The appellant in order to seek enlargement on bail is required to *prima facie* make out the case and he has reasonable chance of success in the appeal. Evidence on record indicates that, the period for which there has been physical relationship between the victim and the appellant, she was the minor and as such no consent is immaterial. Though it is argued that there was consensual relationship, there are specific allegation made against the appellant by the victim which have gone uncontroverted. The appellant therefore cannot be said to have made out any *prima facie* case for his success in the appeal.

5. Having regard to the evidence on record this Court find substance in the apprehension raised Ld. APP and Counsel for the Respondent No.2, about further harassment of victim, if appellant is enlarged on bail. In any case appellant has not even undergone half of the sentence. As such no case is made out at this stage to suspend the substantive sentence.

6. As a result of the above discussion, the Court finds no reason to allow applications.

7. Hence, Interim Application No.4792 of 2024 and Interim Application No. 4793 of 2024 stand rejected.

CRIMINAL APPEAL NO. 1236 OF 2024

The Appeal stands expedited.

(R. M. JOSHI, J.)