

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 897 OF 2023

Mohammad Razaulla Isrial Ansari ...Appellant
Versus
The State of Maharashtra & Anr. ...Respondents

WITH
INTERIM APPLICATION NO.306 OF 2026
IN
CRIMINAL APPEAL NO. 897 OF 2023

Mohammad Razaulla Isrial Ansari ...Applicant
Versus
The State of Maharashtra & Anr. ...Respondents

WITH
CRIMINAL APPEAL NO. 922 OF 2023

Afrinbano Guljar Ahmad Khan ...Appellant
Versus
The State of Maharashtra & Anr. ...Respondents

WITH
INTERIM APPLICATION NO.4439 OF 2025
IN
CRIMINAL APPEAL NO. 922 OF 2023

Afrinbano Guljar Ahmad Khan ...Applicant
Versus
The State of Maharashtra & Anr. ...Respondents

WITH
INTERIM APPLICATION NO.310 OF 2026
IN
CRIMINAL APPEAL NO. 922 OF 2023

Afrinbano Guljar Ahmad Khan ...Applicant
Versus
The State of Maharashtra & Anr. ...Respondents

**WITH
CRIMINAL APPEAL NO.941 OF 2025**

Layis Mohammad @ Langada Munna Sharif ...Appellant
Khan
Versus
The State of Maharashtra & Anr. ...Respondents

**WITH
INTERIM APPLICATION NO.2433 OF 2025
IN
CRIMINAL APPEAL NO. 941 OF 2025**

Layis Mohammad @ Langada Munna Sharif ...Applicant
Khan
Versus
The State of Maharashtra & Anr. ...Respondents

Mr. Ramprasad V. Gupta a/w. Mr. Rohit Vaishya, Rama Gupta and Ms. Sadhna Yadav, for the Appellants.
Ms. Savita M. Yadav, APP, for the Respondent-State.
Ms. Aishwarya Sharma (appointed Advocate), for Respondent No.2 in Criminal Appeal No.941 of 2025.
Mr. Sandeep B. Satkar(appointed Advocate), for Respondent No.2 in Criminal Appeal No.922 of 2023.

CORAM: MADHAV J. JAMDAR, J.
DATED : 10th JUNE 2026

ORAL JUDGMENT:

1. Heard Mr. Gupta, learned Counsel appearing for the Appellants, Ms. Yadav, learned APP appearing for the Respondent-

State, Ms. Sharma, learned Counsel appearing for Respondent No.2 in Criminal Appeal No.941 of 2025 and Mr. Satkar, learned Counsel appearing for Respondent No.2 in Criminal Appeal No.922 of 2023.

2. The challenge in all these Criminal Appeals is to the judgment and order dated 17th June 2023 passed by the learned Special Judge under the Protection of Children from Sexual Offences Act, 2012 (for short “**POCSO Act, 2012**”), Greater Bombay in POCSO Special Case No.491 of 2019.

3. The Appellant in Criminal Appeal No.941 of 2025 is original accused No.1- Layis Mohammad @ Langada Munna Sharif Khan, the Appellant in Criminal Appeal No.897 of 2023 is original accused No.2-Mohammad Razaulla Isrial Ansari and the Appellant in Criminal Appeal No.922 of 2023 is original accused No.3-Afrinbano Guljar Ahmad Khan. All these three Criminal Appeals are being disposed of by this common order.

4. By the impugned judgment and order dated 17th June 2023 passed by the learned Special Judge, accused No.1 was convicted

for the offences punishable under Sections 376 and 506(ii) of the Indian Penal Code, 1860 (for short “IPC”) and Section 6 of the POCSO Act, 2012 and he was directed to undergo various sentences as under :

*“(i) For the Offence punishable Under Section 6 of the Protection of Children From Sexual Offences Act, 2012, he is sentenced to suffer Rigorous Imprisonment for **10 (Ten)** years and to pay **fine of Rs.25,000** (Rs. Twenty Five Thousand only), in default, he shall undergo further simple imprisonment for the period of **3 (Three) months**.*

*(ii) For the Offence punishable Under Section 506(ii) of IPC he is sentenced to suffer Rigorous Imprisonment for **Two (2) years**.*

(iii) As accused No.1 is convicted for the Offence punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012, no separate sentence is imposed for the offence punishable under Section 376 of IPC in view of Section 42 of the Protection of Children from Sexual Offences Act, 2012.”

5. Accused Nos.2 and 3 were convicted for the offences punishable under Sections 109 read with 376 of the IPC and under Sections 17 read with 6 and 21 of the POCSO Act, 2012 and were directed to undergo the various sentences as per the following details :

*“(i) For the Offence punishable Under Section 17 of the Protection of Children From Sexual Offences Act, 2012, they are sentenced to suffer Rigorous Imprisonment for **10 (Ten) years** each and to pay **fine of Rs.5,000** (Rs. Five Thousand only), in default, they shall undergo further simple imprisonment for the period of **15 (fifteen) days** each.*

*(ii) For the Offence punishable Under Section 21 the Protection of Children From Sexual Offences Act, 2012, they are sentenced to suffer Rigorous Imprisonment for **6 (Six) months** each.*

(iii) As accused No.2 and 3 are convicted for the Offence punishable under Section 17 of the Protection of Children from Sexual Offences Act, 2012, no separate sentence is imposed for the offence punishable under Section 109 r/w. 376 of IPC in view of Section 42 of the Protection of Children from Sexual Offences Act, 2012.”

6. The prosecution case as set out in the order dated 2nd May 2026 passed by the learned Designated Judge under the POCSO Act, 2012 is as under:

“The victim girl, then aged about 17 years few months, was residing with her sister and brother-in-law. On 12/06/2019, the victim girl suffered stomachache and therefore, her sister took her for treatment to the hospital. Her pregnancy revealed. Thereafter, victim disclosed that prior to about one month, one unknown lady came to her and lured her by

saying that she will took her to meet one Maulana. The said Maulana is having some super power. If she would listen to him, he will give money, otherwise her all money will be lost. The victim girl accompanied the said woman. Meanwhile, two persons meet them on bus-stop. They captured the photographs of the victim girl. All of them went near at plot No.19, near Hakkani Masjid, Bainganwadi, Govandi, Mumbai. The lady asked occupants of one room to vacate the room. Thereafter, she sent the victim girl in the said room. All three persons stand outside the room. When the victim went in the room, one person namely Maulana was present there. He forcibly committed rape on her. It is alleged that he repeatedly committed rape on her for about four to five times during the period from 01.00 p.m. to 04.00 p.m. At about 04.00 p.m., one lady namely, Munni alongwith said unknown lady, who brought the victim there, have opened the door and they threatened the victim girl that if she disclosed the incident to anyone, they would defame her by publishing the photographs. Hence, victim didn't disclose the incident to anyone. After receiving this information, brother-in-law of the victim girl filed report with the police.”

7. The record shows that the police arrested all three accused on 15th June 2019 and the chargesheet was filed on 21st August 2019. During the trial prosecution examined about 11 witnesses. The learned Special Judge by the impugned judgment and order dated 17th June 2023 convicted all the accused and imposed the sentence as set out herein above. The said order has been

challenged by filing these three separate Appeals by accused Nos.1, 2 and 3 respectively.

8. A learned Single Judge by order dated 20th November 2025 has issued certain directions. The said directions were issued as on the basis of the record, it was found that the Appellants were represented before the learned Trial Court by the legal aid Advocate and the Court found that no cross examination of P.W. 1 to P.W. 6 has been conducted. The learned Single Judge observed that since the Appellants were represented by the legal aid Advocate, it was incumbent on the part of the learned Trial Court to ensure that during the trial the accused is represented effectively and that in case of serious offences, the learned Trial Court ought to have been more vigilant in this regard. After finding that the Appellants were not represented effectively before the learned Trial Court and no cross examination of the witnesses is done and the same has resulted in miscarriage of justice, the learned Single Judge observed that it would be appropriate to give an opportunity to the Appellant to cross examine the witnesses who were not cross examined by the appointed Counsel.

9. In fact, it is required to be noted that a request was made by the learned Counsel appearing for the Appellants that by setting aside the impugned judgment and order, the matters be remanded back, however, the learned Single Judge has directed the learned Trial Court to grant the Appellant an opportunity to cross examine the said witnesses and for that purpose to recall the witnesses and thereafter on the basis of such evidence brought on record, findings be recorded by the learned Trial Court and the said findings be forwarded to this Court to enable this Court to consider and decide the Appeal in proper perspective. The relevant directions of the learned Single Judge are to be found from paragraph Nos.6 to 9, which read as under:

“6. Though learned counsel for the appellant seeks setting aside of the impugned Judgment and Order and then to remand the matter, this Court finds that during the trial no such request was made and hence at this stage it would not be appropriate to set aside the Judgment and Order as it would not be appropriate to go into merit of case and record any findings. Instead ends of justice would meet if the appellant is given an opportunity to cross examine the above stated witnesses and the Trial Court is called upon to record finding upon such evidence brought on record. The findings recorded by Trial Court be forwarded

to this Court to enable this Court to consider and decide the appeal in proper perspective.

7. Since the trial is of year 2019, the Trial Court to complete the exercise of permitting appellant to cross examine witnesses from PW-1 to PW-9 and PW-11 and recording findings within a period of 3 months from 1st December, 2025. It is clarified that no extension on whatsoever ground shall be given.

8. Advocate Mr. Gupta makes statement that he would appear before the Trial Court on behalf of the appellant /accused. It is clarified in case appellant is not represented before the Trial Court on any day without any justified reason, it would be open for the Trial Court to close the evidence of such witness who is present before the Court.

9. The Trial Court not to get influenced with the fact that the appeal is kept pending and it would be duty of the Trial Court to record finding on the basis of evidence brought on record on the cross examination conducted of these witnesses by appellant.”

(Emphasis added)

10. Pursuant to the above directions passed by the learned Single Judge, the learned Designated Judge under the POCSO Act, 2012, Greater Bombay granted opportunity to the Appellant to cross examine the witnesses and the learned

Designated Judge recorded the findings by order dated 2nd May 2026 and forwarded the same to this Court. The learned Designated Judge *inter alia* recorded the findings that the prosecution has failed to prove that the age of the victim girl was minor at the time of incident. Similarly, the prosecution could not establish the chain of collection and carrying the blood samples of accused No.1 for forensic analysis and thus, DNA Report is not acceptable against accused No.1. The Designated Judge has also recorded the findings that the prosecution could not produce the clear and cogent evidence to establish the identity of all the three accused persons and the prosecution failed to raise the presumption under Section 29 of the POCSO Act, 2012 against accused No.1 that he committed rape on the minor victim girl, the prosecution has failed to prove that accused No.2 and 3 have abetted accused No.1 for committing rape on the victim girl. The learned Designated Court further held that the evidence on record is insufficient to attract the alleged allegations leveled against accused Nos.1 to 3. In view of the said findings, the learned Designated Judge answered the point Nos.1 to 8 in the negative. The said point Nos.1 to 8 and the findings recorded by the learned Designated Judge read as under:

“SR. NO	POINTS	FINDINGS
1.	<i>Whether the prosecution proves that on 05/05/2019 at about 17:00 hours, at Plot No.19, Road No.11, Near Hakkani Masjid, Baiganwadi, Shivaji Nagar, Govandi, Mumbai, accused No.1 has committed rape upon victim and thereby committed an offence punishable u/s.376 of IPC?</i>	...No.
2.	<i>Whether the prosecution proves that on the aforesaid date, time and place, accused has committed criminal intimidation and thereby committed an offence punishable u/s. 506(ii) of IPC?</i>	...No.
3.	<i>Whether the prosecution proves that on the aforesaid date, time and place, accused No.2 and 3 agreed with accused No.1 to do an illegal act of committing rape upon victim and in pursuance of the said agreement, accused No.1 has committed rape upon victim and thereby committed an offence punishable u/s. 120-B of IPC?</i>	...No.
4.	<i>Whether the prosecution proves that on the aforesaid date, time and place, accused No.2 and 3 abetted the commission of offence of rape by accused No.1 and thereby committed an offence punishable u/s. 109 of IPC?</i>	...No.
5.	<i>Whether the prosecution proves that on the aforesaid date, time and place, accused No.1 has committed aggravated penetrative sexual assault upon the minor victim girl, aged 17 years and thereby committed an offence punishable u/s. 06 of POCSO Act, 2012?</i>	...No.

6.	<i>Whether the prosecution proves that on the aforesaid date, time and place, accused No.1 has committed aggravated sexual assault upon the minor victim girl, aged 17 years with sexual intent and thereby committed an offence punishable u/s. 10 of POCSO Act 2012?</i>	<i>...No.</i>
7.	<i>Whether the prosecution proves that on the aforesaid date, time and place, accused Nos.2 and 3 abetted and instigated the accused No.1 to commit the offence of rape or by engaging with him in conspiracy or intentionally aided the accused No.1 for doing the offence of rape upon the minor victim girl, aged 17 years and thereby committed an offence punishable u/s. 17 of POCSO Act, 2012?</i>	<i>...No.</i>
8.	<i>Whether the prosecution proves that on the aforesaid date, time and place, accused Nos.2 and 3 failed to report the commission of an offence of rape by accused No.1 and thereby committed an offence punishable u/s. 21 of the POCSO Act, 2012?</i>	<i>...No.”</i>

11. Thus, the learned Designated Judge has held that the prosecution has failed to prove that on 5th May 2019 at about 17:00 hours, accused No.1 has committed rape upon victim and thereby committed an offence punishable under Section 376 of the IPC, the prosecution failed to prove that accused has committed criminal intimidation and thereby committed an offence

punishable under Section 506(ii) of the IPC, the prosecution failed to prove that accused Nos. 2 and 3 agreed with accused No.1 to do an illegal act of committing rape upon victim and in pursuance of the said agreement, accused No.1 has committed rape upon victim and thereby committed an offence punishable under Section 120-B of the IPC, the prosecution failed to prove that accused No.2 and 3 abetted the commission of offence of rape by accused No.1 and thereby committed an offence punishable under Section 109 of the IPC, the prosecution has failed to prove that accused No.1 has committed aggravated penetrative sexual assault upon the minor victim girl, aged 17 years and thereby committed an offence punishable under Sections 6 and 10 of the POCSO Act, 2012, the prosecution has failed to prove that accused Nos.2 and 3 abetted and instigated the accused No.1 to commit the offence of rape or by engaging with him in conspiracy or intentionally aided the accused No.1 for doing the offence of rape upon the minor victim girl, aged 17 years and thereby committed an offence punishable under Section 17 of the POCSO Act, 2012 and the prosecution has failed to prove that accused Nos.2 and 3 failed to report the commission of an offence of rape by accused No.1 and thereby

committed an offence punishable under Section 21 of the POCSO Act, 2012.

12. In view of the said findings recorded by the learned Designated Judge, it is the submission of the learned Counsels appearing for the Appellants that the impugned judgment and order of the conviction and imposing sentence be quashed and set aside and the Appellants be acquitted.

13. On the other hand, it is the submission of Ms. Yadav, learned APP appearing for the Respondent-State and the learned Counsel appearing for Respondent No.2 that the matters be remanded back to the learned Designated Judge for deciding the same afresh in view of the evidence now before the learned Designated Court. However, it is required to be noted that the learned Single Judge by order dated 20th November 2025 has declined the said request made on behalf of the Appellant for setting aside the impugned judgment and order and remanding the matter back to the learned Trial Court.

14. However, there is some substance in the contention raised by Ms. Yadav, learned APP and the learned Counsels appearing for Respondent No.2 that if the Appeals are disposed of in view of the findings recorded by the learned Designated Judge, then the State of Maharashtra and Respondent No.2 will have no opportunity to challenge the said findings recorded by the learned Designated Court, on the basis of the evidence which was laid before the learned Designated Court subsequently.

15. It is required to be noted that the findings which have been recorded in the impugned judgment and order dated 17th June 2023 are directly contradictory to the findings now recorded by the learned Designated Judge by order dated 2nd May 2026, pursuant to directions dated 20th November 2025 passed by the learned Single Judge. In the impugned judgment and order dated 17th June 2023, the learned Special Judge has *inter alia* recorded that the prosecution proved that accused No.1 committed rape upon the victim and thereby committed the offence punishable under Section 376 of the IPC and accused Nos.2 and 3 agreed with accused No.1 to do an illegal act of committing rape upon the victim and finding on other points are recorded in favour of the

prosecution and against the accused. However, it is required to be noted that the said findings are recorded on the basis of the evidence of the prosecution witnesses, where most of the prosecution witnesses were not cross examined and thus, the said evidence without testing on the touchstone of the cross-examination cannot be termed as legal evidence. Now after the order passed by the learned Single Judge dated 20th November 2025, an opportunity to cross examine the witnesses has been given and after their cross examination is conducted, the learned Trial Court has recorded the findings as set out hereinabove where *inter alia* the learned Designated Court in the order dated 2nd May 2026 came to the conclusion that the prosecution has failed to prove the prosecution case.

16. Thus, in the facts and circumstances, the following order is passed:

ORDER

- i. The impugned judgment and order dated 17th June 2023 passed by the learned Special Judge under

the POCSO Act, 2012 in POCSO Special Case No.491 of 2019 is quashed and set aside.

ii. It is directed that the said POCSO Special Case No.491 of 2019 is disposed of in terms of the findings recorded by the learned Designated Judge under the POCSO Act, 2012 for Greater Bombay in order dated 2nd May 2026.

iii. Consequently, all Appellants are acquitted. The Appellants be immediately released from the jail, if they are not required in any other case.

iv. It is clarified that the Criminal Appeals are disposed of in the above terms by directing that the said POCSO Special Case No.491 of 2019 is disposed of in terms of the order dated 2nd May 2026 passed by the Designated Judge under the POCSO Act, 2012 for Greater Bombay. Thus, the said order dated 2nd May 2026 passed by the learned Designated Judge under the POCSO Act, 2012 for Greater Bombay can be challenged by the State of Maharashtra or Respondent

No.2 by filing appropriate Appeal, as it is specifically clarified that the said POCSO Special Case No.491 of 2019 is disposed of in terms of the order dated 2nd May 2026 passed by the Designated Judge under the POCSO Act, 2012.

v. The fine amounts imposed by the impugned judgment and order dated 17th June 2023, if deposited by the Appellants be returned back to the respective Appellants.

17. Accordingly, all these Criminal Appeals are disposed of in the above terms.

18. In view of the disposal of the Criminal Appeals, nothing survives in the Interim Applications and the same are also disposed of.

[MADHAV J. JAMDAR, J.]

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