

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 31 OF 2025
(For Leave to File an Appeal)

The State of Maharashtra
(Through Police Station Turbhe)
Navi Mumbai. Dist: Thane.

... Applicant

Versus

1. Rahul Suresh Munadde
Age: 24 years,
Residence-28 kh, Nimcha-Kala,
Tahsil Tarangain Samaradha Ward no.12
Gharda, Madhya Pradesh

2. XYZ
(Identity withheld as per Sec. 33 (7) of the
POCSO Act)
Turbhe Police Station
Dist-Thane
C.R. No.51 of 2021.

... Respondents

Ms. Mahalakshmi Ganapathy, Addl. P. P. for the Applicant-State.

Mr. Rahul S. Arote along with Mr. Jay N. Suryavanshi and Ms. Nikita V. Gawai, for the Respondent No.1.

CORAM : SARANG V. KOTWAL &
SANDESH D. PATIL, JJ.

DATE : 27th JANUARY, 2026.

P.C. :

1. This is an Application for leave to file Appeal against Judgment and Order dated 04/12/2024 passed by the learned Additional Session Judge, Belapur in POCSO Special Case No.639 of 2023. Vide the impugned Judgment and Order, the Respondent No.1 herein who was the accused before the trial Court was acquitted from the charges of commission of offence punishable under Sections 363, 376(2)(j) and 376(2)(n) of the Indian Penal Code and under Sections 4, 5, 6 of the Protection of Children from Sexual Offences Act, 2012.

2. Heard Ms. Mahalakshmi Ganapathy, learned A.P.P. for the Appellant-State. and Mr. Rahul S. Arote, learned Counsel for the Respondent No.1.

3. Learned A.P.P. submitted that the learned Judge erred in acquitting the accused. The Prosecution had led cogent evidence in respect of Birth Certificate of the victim which shows that on the date of incident i.e. in January, 2021, the victim was below 18 years of age.

She submitted that the fact that there was physical relation leading to the victim's pregnancy is undisputed. therefore, the learned Judge erred in acquitting the accused.

4. Learned Counsel for the Respondent No.1-Accused submitted that the learned Judge has properly appreciated the doubt raised in respect of the age of the victim and therefore since the learned Judge has taken a plausible view, it may not be interfered with.

5. We have considered the submissions. We have perused the copies of evidence annexed to this Application. The victim is examined as PW-2. She had clearly stated that she and Respondent No.1-accused were in a relationship. The first instance of physical relation was on 03/01/2021 at 4:00 a.m. PW-2 had willingly on her own accord had gone to meet the Respondent No.1-accused. Her family came across their photographs. She categorically told her family that she wanted to marry the accused; but since according to her family she had not attained the age of marriage, the marriage was not possible. In spite of

that, PW-2 went with the accused to a different place on 12/02/2021 without telling her family. They stayed together in a rented room. The accused had taken a job in a dispensary. PW-2 became pregnant. In June, 2021, the local Police came in her search and took her back. At that time, she was pregnant for five months. Subsequently, she delivered a child. However, the prosecution was lodged against the accused.

6. From her evidence, it is quite clear that it was the case of consensual physical relation. Therefore, the most important feature in this case is whether the prosecution has proved that PW-2 was a minor at that time.

7. It is also undisputed that the prosecution and the Investigating Agency had not taken care to subject the victim to ossification test. Therefore, the only evidence regarding her age was in the form of Birth Certificate. For that purpose, PW-3 Sachin Patil working with Navi Mumbai Municipal Corporation was examined. He made

reference to the first Birth Certificate dated 14/02/2006 but it was not produced on record. What was produced on record was the Birth Certificate dated 29/07/2021. It is produced on record at Exhibit-32. The learned Judge has considered this evidence in paragraph 15 of the judgment which reads thus;

“ 15] After considering submissions, I find that there is doubt about the date of birth of victim. At the cost of repetition on perusal of birth certificate below Exh.32 it is revealed that address mentioned in this is HP Quarry, Mahatma Gandhi Nagar, Nerul, Navi Mumbai whereas the report of Aarogya Kendra though it is not got exhibited and proved but since it is referred in the cross-examination and argument, it can be considered prima facie to show that what is address mentioned in this report. In this report the address of complainant is mentioned Mahatma Gandhi Nagar, Shiravane whereas address mentioned in the birth certificate below Exh.32 as Mahatma Gandhi Nagar Nerul. Village Nerul and village Shiravane are two different villages. I find that who has reported regarding birth of victim in Aarogya Kendra this aspect is not made clear and therefore when victim was born in the house and nobody reported to Aarogya Kendra from the family of victim, how Aarogya Kendra has mentioned date of birth as 17.09.2005, this aspect is not made clear.”

8. We find that the learned Judge has taken a plausible and reasonable view and has given benefit of doubt to the accused. We do not find any perversity in the said judgment and with the approach taken by the learned trial Judge. We do not find any reason to interfere in the well reasoned judgment and order passed by the learned Additional Session Judge, Belapur in POCSO Special Case No.639 of 2023. Consequently, leave to file Appeal against the acquittal is refused.

9. Accordingly, Criminal Application (For leave to file an Appeal) No. 31 of 2025 is rejected.

(SANDESH D. PATIL, J.)

(SARANG V. KOTWAL, J.)