

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.3327 OF 2025

IN

CRIMINAL APPEAL NO.815 OF 2025

BHALCHANDRA
GOPAL
DUSANE

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Ashok Gujabaji Dangore

...Applicant

Versus

The State of Maharashtra & Anr.

...Respondents

Mr. Vishal V. Rankhambe a/w Ms. Aparna V. Rankhambe,
Mr. Chaitanya M. Bagul and Mr. Afsar Ansari for Applicant.
Mr. Hitendra Dedhia, APP for State-Respondent.
Ms. Vilasini Balsubramanian, Appointed Advocate for
Respondent no.2.

CORAM : R.M. JOSHI, J.

DATE : 24th FEBRUARY 2026.

P.C.:

1. This Application is for suspension of sentence and enlargement of the Applicant on bail in connection with the Judgment and Order dated 5th September 2024 passed by the learned Special Judge under POCSO, Act, Pune in Special POCSO S.C. No.602 of 2019, whereby the Appellant/Applicant came to be convicted for the offences under Sections 363, 354-A of the Indian Penal Code and under Sections 6 r/w Section 5(m) and Section 10 r/w Section 9(m)(1) of the Protection of Children from Sexual Offences Act, 2012 ("POCSO Act") and sentenced to suffer 20 years imprisonment with fine.

2. Learned Counsel for the Applicant submits that the Applicant is in jail for a period of 6 years, 3 months and 25

days. According to him, even if the evidence led by the prosecution is accepted to be correct, the offence proved against the Appellant is under Section 7 of the POCSO Act and not under Section 3 thereof. It is his submission that the evidence of the victim as well as the testimony of medical officer clearly indicates that it is not the case of penetrative sexual assault caused by the Appellant on the victim. He drew attention of the Court to Section 10, which provides for punishment for the aggravated sexual assault, which may extend to 7 years. It is his submission that since the Appellant has already undergone more than 6 years of actual sentence, this is the fit case for his enlargement on bail. It is also contended that the age of the Appellant is 72 years, with no criminal history.

3. Learned APP and the learned Counsel for Respondent No.2 opposed the Application. It is their contention that the age of the victim is 7 years and the evidence of the victim needs to be considered having regard to her tender age. It is submitted that the evidence of medical officer shows that this is a case of a penetrative sexual assault caused by the Appellant on the victim. Thus, they argue that the conviction recorded by the learned Trial Court and for the aggravated penetrative sexual assault, the sentence of 20 years of imprisonment is justified.

4. No doubt the victim's age is of 7 years, *prima facie* consideration of her evidence on record indicates that she has not disclosed about the incident to her parents so also to

the medical officer at the time of recording of the history that she was subjected to any penetration. Even in her evidence before the Court, she does not claim any penetrative sexual assault on her.

4. On the basis of the testimony of the victim, *prima facie*, this Court is of the view that in this case, at the most the offence under Section 7 of the POCSO Act can be said to have been proved. Since the victim is below the age of 12 years, it can be termed as aggravated sexual assault. The punishment for the said offence as provided by Section 10 is imprisonment which may extend to 7 years. This Court, therefore finds *prima facie* substance in the contention of learned Counsel for the Appellant that the Appellant ought not to have been punished by imprisonment for a period of 20 years as done by the learned Trial Court. The Appellant is aged about 72 years, he has no criminal history. He has already undergone more than 6 years of actual imprisonment. Therefore this is an appropriate case for suspension of sentence. Hence, the Order :

ORDER

(I) The Interim Application stands allowed.

(ii) Substantive sentence imposed against the Applicant by Judgment and Order dated 5th September 2024 passed by the learned Special Judge under POCSO, Act, Pune in

Special POCSO S.C. No.602 of 2019 stands suspended till decision of the Appeal.

(iii) The Applicant be enlarged on bail on furnishing P.R. bond in the sum of Rs.15,000/- with one surety in the like amount.

(iv) Bail before the Trial Court.

(v) The Appellant is directed not to contact the victim or her family members in any manner whatsoever.

(vi) Any breach of condition shall lead to forthwith cancellation of bail.

[R.M. JOSHI, J.]