

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.3474 OF 2025

IN

APPEAL NO.924 OF 2025

Rushikesh(Bhaiyya) Sharad Suryawanshi

... Applicant

V/s.

The State of Maharashtra & Anr.

... Respondents

Adv. Sana R. Khan i/by SRK Legal for the Applicant.

Ms. Mankuwar M. Deshmukh, Acting PP a/w Mr. Vinod Chate for the Respondent-State.

Ms. Deepti Chand, appointed Advocate through legal aid for Respondent No.2.

**CORAM : A. S. GADKARI AND
KAMAL KHATA, JJ.**

DATE : 8th April, 2026.

P.C.:-

1) This is an application for suspension of sentence and being released on bail during the pendency of Appeal, of the Applicant.

2) Heard Ms. Khan, learned Advocate for the Applicant, Ms. Deshmukh, learned Acting PP for State and Ms. Chand, learned appointed Advocate through Legal Aid for Respondent No.2. Perused record.

3) By the impugned Judgment and Order dated 14th February, 2025, passed by the learned Additional Sessions Judge, Malegaon in Sessions Case No.23 of 2019 the Applicant is convicted for the offences punishable under Section 376(1), 323, 506 and 201 of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for life and to pay a fine of Rs.13,000/-

4) It is the prosecution case that, on 24th December, 2018, the prosecutrix had been to the grocery shop near her residence, to purchase snacks. While returning therefrom, the Applicant started walking very close to her and subsequently forcibly covered her mouth and threatened her at knife-point. He then forcefully dragged her into a lane near the Ram Mandir, and sexually assaulted her. As a result of the said assault, the clothes of the prosecutrix were stained with blood. Thereafter, he threatened the prosecutrix, physically assaulted her with kicks and blows on her stomach and hands.

4.1) The prosecutrix, being frightened, immediately rushed to her residence and informed about the said incident to her parents. Her parents immediately, took her to the nearest police station, where the present crime was registered at the instance of prosecutrix's mother. The FIR is at Exh.57. The clothes of the prosecutrix were seized under a seizure panchnama dated 25th December, 2018. The said panchnama is at Exh.35. The said panchnama specifically mentions about the seizure of the top of the

prosecutrix which was torn below the stomach area and was having blood stains on it.

4.2) The statement of prosecutrix was also recorded under Section 164 of CrPC by the learned Judicial Magistrate First Class, Satana, District Nashik. The said statement of victim recorded under Section 164 of CrPC is at Exh.13/2 in the record of the trial Court. In the said statement, the prosecutrix reiterated about the sexual assault as informed to the police and was recorded in the First Information Report.

5) The aforementioned facts are deciphered from the evidence of prosecutrix and other material i.e. exhibited documents on record.

6) Learned Advocate for Applicant submitted that, there are material discrepancies in the description of the clothes given by the prosecutrix to the police and what has been stated in her substantive evidence. She submitted that, the version of prosecutrix is not reliable, as the alleged incident took place in a densely populated locality, adjacent to the Ram Mandir. She further submitted that, the Applicant as of today, has undergone 8 years of incarceration and after taking into consideration the overall view of the matter, he deserves to be released on bail.

7) At this stage, a useful reference can be made to a decision of the Supreme Court in the case of *Vadivelu Thevar vs. The State of Madras*, reported in *AIR 1957 S.C. 614*, wherein the Supreme Court has enumerated three categories of witnesses namely, (i) wholly reliable, (ii) wholly

unreliable and (iii) neither wholly reliable nor wholly unreliable.

7.1) In case of *Bharwada B. Hirjibhai vs. State of Gujarat*, reported in *AIR 1983 SC 753*, the Hon'ble Supreme Court has held that, corroboration is not *the sine qua non* for a conviction in a rape case. In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complaints of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? That, to do so is to justify the charge of male chauvinism in a male dominated Society.

The Supreme Court further noted that, a girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred.

7.2) In case of *Aman Kumar & Ors Vs. State of Haryana*, reported in *AIR 2004 SC 1497*, the Hon'ble Supreme Court has held that, the evidence of prosecutrix stands at higher pedestal than injured witness and needs no corroboration.

7.3) In case of *State of Himachal Pradesh Vs. Shree Kant Shekhari*, reported in *AIR 2004 SC 4404*, the Hon'ble Supreme Court has held that, the prosecutrix is not accomplice in a crime.

7.4) In case of *State of Punjab Vs. Ramdev Singh*, reported in 2004

1 SCC 421, the Hon'ble Supreme Court has held that, Courts have to display a greater sense of responsibility and to be more sensitive while dealing with charges of sexual assault on women, particularly of tender age and children. That, a crime is against basic human rights. That, it is violative of victim's fundamental rights under Article 21 and so Courts should deal with cases of sexual offence sternly and severely.

7.5) In case of *Motilal Vs. State of Madhya Pradesh*, reported in (2008) 11 SCC 20, the Hon'ble Supreme Court has held that, the testimony of a prosecutrix cannot be disbelieved, even if, the doctor in a given case finds no sign of rape. It was further held that, the Courts must deal with such case with utmost sensitivity and they should examine broader probabilities of the case and not get swayed by minor contradictions or insignificant discrepancies in the statement of prosecutrix.

8) In our view, certain discrepancies in the description of the clothes, as stated before the police and as deposed to, in the victim's substantive evidence, do not render her testimony unreliable. We also find no merit in the contention that the alleged incident could not have occurred in a densely populated locality, adjacent to the Ram Mandir. After perusing the testimony of prosecutrix and after applying the test enunciated by the Hon'ble Supreme Court in the case of *Vadivelu Thevar vs. State of Madras* (supra), we are of the view that, the testimony of prosecutrix is wholly reliable.

- 9) In view of the above, we are of the opinion that, the Applicant cannot be released on bail during the pendency of the Appeal.
- 10) Application is accordingly rejected.

(KAMAL KHATA, J.)

(A.S. GADKARI, J.)