

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 3589 OF 2025
IN
CRIMINAL APPEAL NO. 1189 OF 2024

Mehtab Aalam Aabid Ali Ansari	...Applicant
<i>Versus</i>	
The State Of Maharashtra and Anr.	...Respondents

Adv. Shashikant D. Chandak a/w Adv. Kanchan S. Chandak
appointed through Legal Aid, for the Applicant.
Miss Anagha A. Deshmukh, APP, for the Respondent No.1/ State.
Adv. Abhishek Avachat appointed through Legal Aid (Through V.C.)
a/w Mr. Siddhant H. Deshpande, for the Respondent No.2.
PSI Sanjay S. Ghag, Pairavi Adhikari, Malvani Police Station,
Mumbai, is present.

CORAM: R. M. JOSHI, J.

DATED: 11th FEBRUARY, 2026.

PC:-

1. This application is for suspension of sentence and the enlargement of applicant/ accused on bail in connection with Judgment and Order dated 03.02.2024, passed in POCSO Special Case No. 121 of 2016, whereby the appellant came to be convicted for the offences punishable and under Sections 5, 6, 8 and 10 of Protection of Children from Sexual Offences Act, 2012 (for short “POCSO Act”) and under Section 376(2)(i) of the

Indian Penal Code and sentenced to suffer 20 years imprisonment with fine.

2. Learned Counsel for the appellant submits that there are enormous inconsistencies in the statements of the victim, sister of the victim and mother of the victim (Informant), which make the evidence of victim unreliable. It is his further submission that the case of the prosecution throughout, is with regard to the occurrence of the incident on 17.12.2015, when the appellant is said to have been sexually assaulted victim, who was aged about 5 years. He drew attention of the Court the admission given by the informant, i.e. the mother of the victim, which indicates that on 17.12.2015, when the victim came crying to her to the house, she was taken to the police station so also with the medical officer for examination, when it was not found that she was subjected any sexual assault. According to him the prosecution has improved his case during the trial by introducing the commission of the offence on 23.12.2015. It is his submission that there are inconsistencies in the statements of the victim and her sister on a material aspect such as, as to whether the lights of the house wherein the incident occurred were on or off. It is the submission that the accused has led evidence; by stepping into the witness box to show that there are disputes between the parties and the false implication is possible. It is his submission that the applicant/accused is in jail for last ten years and since there is likelihood of bail being heard in short period of time, he be enlarged on bail. He is argued that the applicant has no criminal history behind this and not likely to flee.

3. Ld. APP and Ld. Counsel for the Respondent No.2 opposed grant of bail to the applicant. It is their contention that, there is evidence on record to indicate that victim, aged about 5 years, has narrated the manner in which the incident has occurred, wherein she was sexually assaulted by the applicant/accused. It is their contention while referring to the observations made by the trial court that there is a possibility of miscommunication between the victim and the medical officer when she was taken to the medical officer at the first instance. On these amongst other contentions they seek dismissal of the application.

4. In order to seek suspension of sentence, the applicant has to show that he has fair chance of success in appeal. Needless to say that the prosecution is required to prove the offences, even under the POCSO act, to get the accused beyond reasonable doubt. As rightly pointed out by Ld. Counsel for the applicant, prima facie the evidence on record indicates that there are major inconsistencies in the statements of the victim, her sister, and the informant, i.e. mother of the victim. The said inconsistencies are material in nature and cannot be brushed aside by way of branding them as insignificant. Most importantly, it is an admitted fact that on 17.12.2015 itself, the victim had narrated occurrence of some incident with the appellant, and the victim was taken to the medical officer for the examination. Neither any history was given of sexual assault, nor any evidence was found on the clinical examination of the victim to show that she was subjected to any sexual assault. In the light of these facts, this court finds substance

in the contention of the Ld. Counsel for the applicant that the history given at later point of time, may not depict the correct facts. First medical examination of victim on the day of incident has ruled out the sexual assault. Thus, the evidence sought to be brought on record by examination of the medical officer, can be seriously challenged at the time of the hearing of the appeal. Suffice is to say that the applicant has a fair chance of success in the appeal. The applicant is behind bar from last ten years. Appeal is not likely to be heard in short period of time. The appellant has no criminal history, is not likely to flee from justice. Hence, following order.

ORDER

- i) The Interim Application stands allowed.
 - ii) The substantive sentence imposed against the appellant by the judgment and order dated 03.02.2024 passed in POCSO Spl. Case No. 121 of 2016, stands suspended till the decision of the appeal.
 - iii) The appellant be enlarged on bail, on furnishing P. R. Bond of Rs.15,000/- with one surety of the like amount.
 - iv) The appellant not to contact victim or the family members of the victim in any manner whatsoever.
 - v) Any breach of the above condition shall result forthwith in cancellation of bail.
6. In view of the above, Interim Application stands disposed of.

7. It is clarified that the above observations are made on *prima facie* consideration of the material on record and the same shall not bind the parties during the final hearing of the Appeal.

(R. M. JOSHI, J.)

VDMokal/-