

Rekha Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 3766 OF 2025
IN
CRIMINAL APPEAL NO. 85 OF 2026

Dinesh Shribharat Mandal ...Applicant
Versus
The State of Maharashtra and Anr. ...Respondents

Mr. Shilpan Gaonkar with Mr. Samarth Sadavarte, for the
Applicant.
Mr. S. S. Ghag, APP, for the Respondent No.1-State.
Mr. Tohid Shaikh,, for the Respondent No.2.

CORAM: R. M. JOSHI, J.

DATED: 29th JANUARY 2026

PC:-

1. This application is for suspension of sentence and enlargement of the appellant / accused on bail in connection with Judgment and Order dated 12th March, 2025, passed in POCSO Spl. Case No. 318 of 2021, whereby the appellant is convicted for the offences punishable under Section 376, 376B of the Indian Penal Code and under Sections 3(c), 4, 5(m), 6, 7, 8, 11(ii) and 12 of Protection of Children from Sexual Offences Act, 2012 (for short "POCSO Act").

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2. Learned Counsel for the appellant submits that the evidence led by the prosecution is wholly inconsistent on material facts with regard to the occurrence of the accident. According to him, the mother of the victim who is the informant states about the victim disclosing her the incident by stating that the appellant herein touched to her private part after removing her pant. Whereas, the victim states about the appellant not only removing her pant but also touching to her private part and inserting finger therein. In the history given to the Medical Officer by the mother of the victim, however, states about penovaginal and penoanal intercourse with the victim. It is his submission that there is no medical evidence to support the said allegations against the appellant. According to him, the appeal is not likely to heard in a short period of time and as such, the appellant does not have any criminal history. He further submits that the informant has admitted in her cross-examination that there is offence registered against her for human trafficking.

3. Learned APP as well as learned Counsel for the respondent No.2 opposed the application by stating that that the victim consistently deposed before the Court in her substantial evidence as to the manner in which the incident has occurred. It is their further contention that there is medical evidence to support the contention of the victim about the appellant inserting finger into her private part.

4. At this stage, this Court is required to consider, as to whether any prima facie chance of success exists for the appellant in the appeal. Perusal of the record indicates that there is inconsistent evidence of the mother of the victim and victim with regard to the actual occurrence of the incident. If the mother of the victim has recorded history to the Medical Officer alleging penovaginal and penoanal intercourse, there is no reason for her not to depose the same before the Court in her substantive evidence. In her substantive evidence she states about the appellant having touched private part of the victim. The victim, on the other hand, claims about insertion of the finger into her private part. The evidence these witnesses would contrary to the evidence of the Medical Officer, who recorded the history at the instance of the mother of the victim. At this stage, there is reason to believe fair chance of success in the appeal and possibility of false implication is not ruled out.

5. Having regard to the aforestated facts so also, in view of the fact that the appellant has no criminal history and is not likely to flee from justice, this is a fit case for suspension of sentence and enlargement of the appellant on bail. Hence, the following order.

ORDER

(a) The Interim Application is allowed.

- (b) The substantive sentence imposed against the Applicant/ Appellant by Judgment and Order dated 12th March, 2025 passed in POCSO Spl. Case No. 318 of 2021 stands suspended till decision of the Appeal.
- (c) The Applicant/Appellant be enlarged on bail on furnishing P.R. bond of Rs.15,000/- with one surety in the like amount.
- (d) The Applicant/Appellant not to contact the victim or his family members in any manner whatsoever.
- (e) Any breach of aforestated condition shall result into forthwith cancellation of bail.

6. In view of the above, Interim Application No. 3766 of 2025 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.)