

Rekha Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 3839 Of 2025
IN
CRIMINAL APPEAL NO. 1154 OF 2024

Shahrukh Alimulla Shaikh ...Applicant
Versus
The State of Maharashtra and Anr. ...Respondents

Mr. Vishal Deshpande, for the Applicant/Appellant.
Mr. C.D. Mali, APP, for the Respondent-State.
PSI Usha Khose, MHB Colony Police Station, Mumbai, present.

CORAM: R. M. JOSHI, J.

DATED: 9th 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 22nd August, 2024, passed in POCSO Spl. Case No. 91 of 2018, whereby the appellant is convicted for the offence punishable under Section 376D of the Indian Penal Code and under Sections 4,6, 8 and 12 of Protection of Children from Sexual Offences Act, 2012 (for short “POCSO Act”) and sentenced to suffer rigorous imprisonment of 20 years.

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2. Learned Counsel for the appellant submits that after the arrest of the appellant in connection with this crime, for last 8 years he is in jail. It is his submission that from the evidence on record, it cannot be said that the offence has been proved against the appellant beyond reasonable doubt. In order to support this submission, he drew attention of the Court to the cross-examination of the victim as well as informant i.e. the mother of the victim. It is his submission that the victim has admitted in the cross-examination about recording the report to the police as per the say of her aunt so also of the fact of her aunt giving history to the Medical Officer as accepted by PW01. He also drew attention of the Court to the evidence of PW-4, who is the auto driver and claims to have been to the spot just after occurrence of the incident. It is his submission that even to this witness no complaint was made by the victim with regard to the alleged sexual assault caused by the accused on her. It is his further submission that the medical evidence does not support the theory of the prosecution with regard to the commission of rape by three accused persons in an auto rickshaw, in view of the fact that there are no injuries found on the person of the victim. It is submitted that though the hymen is shown to be ruptured, there is nothing to show that it was a fresh injury. It is his submission that the appellant has no criminal history behind him.

3. Learned APP and learned Counsel for the respondent No.2 opposed the Application by relying upon testimony of the victim, which according to them, is reliable. It is submitted that there is

no delay in lodging of the FIR as the same is lodged on the next day of the occurrence of the incident. Reference is also made to the evidence of PW-14, who has proved the birth record of the victim, which according to them, indicate that she was minor at the relevant time. Reference is also made to the PW-9 Medical Officer, who had clinically examined the victim. It is their submission that having regard to serious nature of offence, this is not a case for enlargement of appellant on bail.

4. In view of the settled position of law, if the appellant is in position to make out a *prima facie* case *qua* success in the Appeal, he would be entitled to be enlarged on bail. In this case *prima facie* consideration of evidence on record indicates that the First Information Report ('FIR') came to be lodged at the instance of aunt of the victim so also history was given to the Medical Officer by her. Similarly, the first informant admits that victim was in love with the friend of the accused and in order to teach lesson to them, the report came to be lodged. In this backdrop, if the medical evidence is considered, it becomes practically to difficult to accept the case of the prosecution that a gang rape was committed in an auto rickshaw without causing any injuries on the person of the victim. It is further gets support from the testimony of PW-4 auto driver, though went to the spot, the victim failed to make any complaint with regard to the incident. The statement of the auto driver with regard to the confession given by the accused is falsified being improvement, which has been duly proved through the Investigating Officer- PW 12.

5. Having regard to the aforestated facts, it can be said that the appellant has fair chance of success in the Appeal. He is behind the bar for the last 8 years with no other crime recorded against him. He is not likely to flee from justice. There is no possibility of this Appeal being taken up hearing in short period of time. 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 22nd August, 2024 passed in POCSO Spl. Case No. 91 of 2018 stands suspended till decision of the Appeal.
- (c) The Applicant/Appellant be enlarged on bail on furnishing PR. bond of Rs.15,000/- with one surety in the like amount.
- (d) The Applicant/Appellant not to enter the jurisdiction of MHB Colony Police Station, Mumbai, till the decision of the Appeal.
- (e) The Applicant/Appellant not to contact the victim or his family members in any manner whatsoever.

(f) Any breach of aforesaid condition shall result into forthwith cancellation of bail.

6. In view of the above, Interim Application No. 3839 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.)