

Ajit Pathrikar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1164 OF 2025

WITH

INTERIM APPLICATION NO. 4384 OF 2025

IN

CRIMINAL APPEAL NO. 1164 OF 2025

Mahesh Dattatray Gorde ...Appellant

Versus

State Of Maharashtra And Anr. ...Respondents

Mr. Ghanasham S. Jadhav *i/b Ganesh Mane, for the Appellant.*

Mr. A. S. Gawai, *APP for the Respondent No.1-State.*

Mr. Ranjeet Pawar, *for the Respondent No.2.*

CORAM R. M. JOSHI, J.

DATED: 21st JANUARY 2026

PC:-

IN INTERIM APPLICATION NO. 4384 OF 2025:

1. This application is for enlargement of the Appellant on bail and suspension of sentence in connection with the Judgment and Order dated 14th October 2025 passed in Special Case (POCSO) No. 567 of 2021, whereby the Appellant/Accused came to be convicted for the offences punishable under Sections 376(i), 363 of the Indian Penal

Code, 1860 (for short, “IPC”) and Sections 3(a), 4(2), 5(j)(ii) and 6 of the Protection of Children From Sexual Offences Act, 2012 (for short, “POCSO Act”) and was sentenced to suffer maximum punishment of 20 years’ imprisonment with fine.

2. Learned counsel for the Appellant submits that apart from the fact that the victim as well as the Informant have not supported the case of the prosecution, the Trial Court has committed an error in relying upon the DNA test report to convict the Appellant. In this regard, he draws attention of this Court to the evidence on record, more particularly, the evidence of the Chemical Analyzer, who accepts the fact that the samples of victim were drawn on 27th July 2021 and the samples of the child were taken on 29th July 2021. However, the samples were received by the FSL on 29th July 2021. Thus, it is his contention that there is no evidence to indicate as to in whose custody the said samples were kept. He also draws attention of the Court to the evidence of Dr. Patel (PW-9), who drew the said samples. It is his submission that in the substantive evidence before the Court, this witness does not

say anything about collecting the samples of the child. In the cross-examination, she admitted to not using a DNA kit at the time of collection of the samples of the victim. It is his submission that having regard to all these facts, serious doubt is created with regard to the DNA test result.

3. Learned APP opposes the application, contending that the age of the victim has been duly proved before the Trial Court and that in view of the DNA test report, there is no error committed by the Trial Court in convicting the Appellant.

4. Respondent No.2 is present in Court and has instructed learned counsel for Respondent No.2 to make a statement of not opposing the grant of bail to the Appellant.

5. No doubt, merely because the victim records no objection for grant of bail, the sentence cannot be suspended unless a case is made out by the Appellant that he has a fair chance of success in the Appeal.

6. In the present case, except for the DNA test report, there is no other evidence to connect the Appellant with the crime. Perusal of the evidence on record indicates that the samples of the victim were drawn on 27th July 2021. However, the said samples were received by the FSL on 29th July 2021. *Prima facie*, this Court unable to find any evidence on record to indicate the custody of the said samples till the samples were received by the FSL. Apart from this, there is an admission of the doctor indicating that while collecting blood samples for the DNA report, a DNA kit was not used. Thus, it can be said that the Appellant has reasonable chance of success in the Appeal. He has no criminal history and is not likely to flee from justice. Hence, the following order:

ORDER

- i) The application is allowed.
- ii) The Appellant be released on bail on furnishing P.R. Bond of Rs.15,000/- with one surety in the like amount.

iii) The suspension of sentence imposed against the Appellant by Judgment and Order dated 14th October 2025 passed in Special Case (POCSO) No. 567 of 2021 stands suspended till decision of the Appeal.

IN CRIMINAL APPEAL NO. 1164 OF 2025:

7. Admit

8. Call record and proceedings.

9. Learned APP waives service on behalf of the Respondent-State.

10. Mr. Ranjeet Pwar waives service on behalf of Respondent No.2.

(R. M. JOSHI, J.)