

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.4513 OF 2025

IN

CRIMINAL APPEAL NO.1204 OF 2025

Yogesh Pandharinath Ghuge ...Applicant

Versus

The State of Maharashtra & Anr. ...Respondents

Mr. Aniket Vagal a/w Ms. Juhi Kadu, Ms. Savvy Kolhekar
for Applicant.

Mr. Rishikesh M. Pathe, APP for State- Respondent no.1.

Ms. Komal Sinhe, for Respondent no.2.

CORAM: R.M. JOSHI, J.

DATE : 23rd FEBRUARY 2026.

P.C.:

1. The Appellant is seeking suspension of sentence and enlargement on bail in connection with Judgment and Order dated 6th November 2025 passed by the learned Additional Sessions Judge, Yeola, District-Nashik in Special Case No.338 of 2023 whereby he was convicted for the offences punishable under Sections 376, 363, 366, 354 of the Indian Penal Code and Section 8 of the Protection of Children from Sexual Offences Act, 2012 and sentenced to suffer maximum period of imprisonment of 20 years with fine.

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2. Mr. Vagal, learned counsel appearing for the Applicant submits that for last over 3 years, the Appellant is in jail. On merits, it is his argument that the burden was on the prosecution to prove at the first instance that the victim is the minor and therefore provisions of POCSO Act would be invoked.

3. In this regard, he made reference to the testimony of the victim as well as her father who do not state even the date of birth of the victim. It is his submission that it was not open for the prosecution to prove the date of birth of the victim on the basis of the evidence of the Investigation officer and birth certificate sought to be proved by him. In this regard, the admission given by the Investigating Officer in the cross-examination is referred indicating that in the said certificate neither name nor the sex of the child is mentioned. It is his further submission that from the cross-examination of the victim, it can be seen that in case of any sexual relationship between them, the victim was a consenting party.

4. According to him, in view of the *prima facie* evidence on record, the Appellant has fair chance of succeeding the Appeal. He claims that the Appellant has no criminal history and he is not likely to flee.

5. Mr. Pethe, the learned APP for the State and Ms. Komal Sinha, learned counsel for Respondent no.2 oppose the application. It is their submissions that the prosecution has proved the age of the victim on the basis of birth certificate, Exhibit-59. In this regard, reference is made to the testimony of the Investigating Officer, who deposed about having obtained the birth certificate of the victim from the concerned authority. It is submitted that even otherwise there is evidence in the form of testimony of PW-10, Headmaster to indicate that the date of birth of the victim is 24th July 2008 and hence the prosecution was able to prove that the victim is a child within the meaning of Section 2(b) of the POCSO Act.

6. In any proceeding under the POCSO Act, the burden is upon the prosecution to prove that the victim is a minor and therefore a child in order to invoke the said provisions of the

POCSO Act. *Prima facie* perusal of evidence on record indicates that neither the victim herself nor her parents deposed about the date of birth of the victim. The prosecution has placed reliance on the evidence of witness no.10 i.e. the Principal of the School wherein the victim was studying, in order to show her date of birth to be 24th July 2008. From the cross-examination of the said witness, it is clear that the said school was not the school first attended by the victim.

7. In view of the provisions of Section 94 read with Rule 12 of the Juvenile Justice Act, the evidence of the child from the school in respect of the school first attended would be considered as relevant to prove the age of the child. In this case, since the age of the child has not been proved on the basis of the evidence with regard to the first school of the child, the same deserves to be kept out of consideration.

8. As far as the date of birth sought to be proved by the Investigating Officer is concerned, though he stated to have obtained the said certificate from the competent authority, in absence of the birth certificate being shown to the parents of

the victim or atleast to victim herself, it cannot be said that the said birth certificate belongs to the victim.

9. Apart from this, the Investigating Officer admits in his cross-examination that the certificate which he has obtained, there is no mention about the sex of the child. *Prima facie*, consideration of record creates doubt with regard to the evidence lead by the prosecution indicating victim to be a minor. Apart from this, *prima facie* there is no medical evidence to support the allegation of the prosecution with regard to the forcible sexual intercourse.

10. In the light of these facts, cross-examination of the victim supports the contention of the learned counsel for the Appellant that this could be case of consensual relationship if any between the Accused and victim. Having regard to these facts, the Appellant has fairly good chance of success in the Appeal. He has no criminal history behind him. He is not likely to flee from justice. Appeal is not likely to be heard in short period of time. Hence, Order

O R D E R

(I) Substantive sentence imposed against the Appellant by Judgment and Order dated 6th November 2025 passed by the learned Additional Sessions Judge, Yeola, District-Nashik in Special Case No.338 of 2023 stands suspended till decision of the Appeal.

(ii) The Appellant be enlarged on bail on furnishing P.R. bond of Rs.15,000/- with one surety in the like amount. Bail before Trial Court.

(iii) The Appellant shall not contact the victim in any manner whatsoever;

(iv) Breach of conditions shall result into cancellation of bail.

(v) Aforesaid stated observations are *prima facie* in nature and shall not bind the parties at the time of decision of the Appeal

[R.M. JOSHI, J.]