

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1271 OF 2025
WITH
INTERIM APPLICATION NO. 4742 OF 2025
IN
CRIMINAL APPEAL NO. 1271 OF 2025

Dr. Riyaz Shafique Deshmukh

...Appellant

Versus

XYZ (Victim) & Anr.

...Respondents

Mr. K T Babu a/w. K. Shilpa Singh for Appellant.

Mr. Akshay Dingale for Respondent No.2

Mr. Rishikesh Pethe, APP for State.

CORAM : R.M. JOSHI, J.

DATE : 20th FEBRUARY, 2026

P.C. :

1. This Application is for suspension of sentence and enlargement of Appellant on bail in connection with the judgment and order dated 19th November 2025 passed in Special POCSO Case No. 691 of 2019 whereby the Appellant came to be convicted for the offence punishable under Section 9 (e) and 10 of Protection of Children from Sexual Offences Act (**POCSO Act**) and sentence to suffer rigorous imprisonment for five years with fine of Rs. 5,000/- and default sentence.

2. Learned Counsel for the Appellant submits that the evidence laid by the prosecution more particularly evidence of victim and other witnesses is wholly inconsistent, and on the basis of the said evidence, it cannot be said that any incident had occurred on 2nd June 2019. Reference is made to the cross examination of evidence of PW – 3 who states that victim had been to the Appellant in his clinic even on previous occasion to the date of incident of 2nd June 2019 victim on the other hand, in no uncertain terms admits that she went only once to the clinic on 2nd June 2019. This inconsistency cannot be ignored by branding the same as minor one. It is his further submission that though independent witnesses were available, Investigating Officer for the reason best known to him had chosen not to record their statements. It is claimed that appellant has no criminal history and is not likely to flee.

3. Learned APP and learned Counsel for the Respondent No.2 vehemently oppose the Application.

4. If the Appellant makes out a case of fair chance of success in the Appeal, he is entitled to seek suspension of sentence. Here in this case, the allegation of the victim is against a Doctor of inappropriate touch. The moment there is allegation which otherwise could not have any support from any medical evidence, the evidence of the victim so also the overall evidence laid by prosecution should be of sterling quality and there remains no iota of doubt to accept the version of the

victim. In regard to the occurrence of the incident in this case, victim admits that prior to 2nd June 2019, she had never been to the Appellant. PW – 3 however claims that even on two occasions prior thereto the victim had been to the doctor. Apart from the said inconsistency which is material in nature, there is absolutely no evidence to show victim actually had been to the Appellant on 2nd June 2019. There is no prescription nor any statement of independent witness being recorded. The Investigating Officer admits about recording statements only of interested witnesses. There appears no explanation about non examination of the independent witnesses though they were available. Having regard to these facts, this Court finds substance in the contention of Counsel for the Appellant that the Appellant has fair chance of success in the Appeal. The Appellant is handed over with short term sentence. Appeal is not likely to be heard in short period of time. The Appellant is a doctor with no criminal history behind him and is not likely to flee from justice. Hence the following order:

ORDER

- (i) The substantive sentence imposed against the Appellant by the trial Court by the judgment and order dated 19th November 2025 passed in Special POCSO Case No. 691 of 2019 stands suspended till the hearing of the appeal.
- (ii) The Appellant be enlarged on bail on furnishing

PR Bond of Rs. 15,000/- with one surety in the like amount.

(iii) Bail before the Trial Court.

(iv) Appellant not to contact victim or any witness in any manner whatsoever.

(v) In order to ensure that, the Appellant is available during the hearing of the Appeal, the Appellant to mark his attendance before the concerned police station once in six months.

(vi) Any breach of this condition will result the vacation of this order and the Appellant shall be taken in custody for undergoing the remaining sentence.

(vii) Observation made in this order are *prima facie* condonation on record and the same shall not bind parties during final hearing of of appeal.

(R.M. JOSHI, J.)

Mandar M.