

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 414 OF 2026

Kalpesh Sanjay Nikam ... Applicant

Versus.

The State of Maharashtra & Anr. ... Respondents

Ms. Prajakta Deshmukh (Thr. V. C.), Advocate for Applicant.

Mr. Sukanta Karmakar, APP for Respondent No. 1 – State.

Ms. Sonal Dabholkar, Advocate for Respondent No. 2 under Legal Aid.

Ms. Ashwini Kadam, Respondent No. 2, present in Court.

CORAM : ASHWIN D. BHOBE, J.

DATE : 2nd APRIL, 2026

P.C. :

1. Heard Ms. Prajakta Deshmukh learned Advocate for the Applicant appearing through V. C., Mr. Sukanta Karmakar learned APP for Respondent No. 1 - State and Ms. Sonal Dabholkar, learned Advocate for Respondent No. 2. Respondent No. 2 (Complainant/Informant) is present in Court.

2. This Application under Section 528 of the Bharatiya

Nagarik Suraksha Sanhita, 2023 (hereafter "BNSS") challenges the order dated 03.01.2026 (hereafter "impugned order"), by which the Special Judge, Panvel District Raigad (hereinafter "Special Judge"), dismissed the Application filed by the Applicant seeking to set aside the no-cross order dated 24.07.2025.

3. Ms. Prajakta Deshmukh, learned Advocate for the Applicant, states that she now represents the Applicant before the Special Judge in Special POCSO Case No. 09 of 2021. She, at the outset, acknowledges the lapse on the part of the Applicant and submits that if the Applicant is given one opportunity to cross-examine the victim, she, on behalf of the Applicant, undertakes to conduct and complete the cross-examination on the scheduled date. She estimates that the cross-examination will last about an hour and will not extend beyond that. She further assures that the Applicant will not seek an adjournment on the date fixed for the cross-examination.

4. Ms. Sonal Dabholkar, Advocate for Respondent No. 2, states that the Applicant's casual approach in delaying the cross-

examination of the victim has resulted in harassment and inconvenience to the victim as well as the Respondent No. 2.

5. As rightly submitted by Mr. Sukanta Karmakar, learned APP, and Ms. Sonal Dabholkar, learned Advocate for Respondent No.2, the Applicant should have been more diligent in pursuing the cross-examination of the victim and ensuring the completion of the trial. However, the fact that the Applicant remains incarcerated is not contested.

6. Although there is neither any fault in the view of the Special Judge in passing the no-cross order dated 24.07.2025 nor in the decision to reject the Application to set aside the no-cross order, considering that the Applicant is in jail and that by virtue of the order dated 24.07.2025, the cross-examination of the main witness (the victim) is closed, in the exceptional facts and circumstances of this case, some leniency would be warranted.

7. Another factor that would weigh in favour of the Applicant in this Application is that the Bail Application No. 477 of 2025, filed by the Applicant in this Court seeking bail in the

Special (POCSO) case No. 09 of 2021, was withdrawn by the Petitioner because the trial had already commenced and the victim was to be examined.

8. Mr. Sukanta Karmakar learned APP for the Respondent State on instructions from the Investigation Officer and Ms. Sonal Dabholkar learned Advocate for Respondent No. 2 on instructions from Respondent No. 2, who is present in court, submit that if the Applicant undertakes before this Court to cross-examine the victim and complete the cross-examination of the victim on the next date before the Special Court, then they do not object to providing an penultimate opportunity for the Applicant to cross-examine Respondent No. 2. They state that this concession is made only because the Applicant is in jail.

9. Considering the statement made by Ms. Prajakta Deshmukh, learned Advocate for the Applicant, her assurance that the cross-examination of the victim would be conducted and completed on the scheduled date, and the concession made by Mr. Sukanta Karmakar and Ms. Sonal Dabholkar, this Application is

allowed, subject to the following conditions:

- (a) The impugned order is set aside, the Application filed by the Applicant seeking to set aside the no-cross order dated 24.07.2025 is allowed, consequently, the no-cross order dated 24.07.2025 is set aside.
- (b) The Special (POCSO) case No. 09 of 2021, now scheduled for 06.04.2026 before the Special Judge, by consent of the parties, is adjourned to 09.04.2026 for cross-examination of the victim in the present case. In view of the peculiar facts of this case, the learned Special Judge is requested to adjust his cause list for 09.04.2026 and to ensure that Special Case No. 09 of 2021 is scheduled for 09.04.2026 for the purpose of cross-examination of the victim.
- (c) Respondent No. 2, who is present in Court, assures the Court to keep the victim present before the Special Court on 09.04.2026 at 11.00 a.m.

- (d) Statements made by Ms. Prajakta Deshmukh, learned Advocate for the Applicant before this Court: that she would personally remain present before the Special Judge on 09.04.2026 to conduct the cross-examination of the victim; that no adjournments would be sought on the said date on any grounds; that if, for any reason, she is unable to appear on 09.04.2026, an alternative arrangement would be made to conduct the cross-examination; and that the cross-examination of the victim would be completed on 09.04.2026 within the time stated by her, are taken on record.
- (e) In the event that the Applicant seeks an adjournment or any attempt is made to defer the cross-examination scheduled on 09.04.2026, then the order dated 24.07.2025 shall stand restored, and the Special Judge shall proceed to decide the matter in accordance with law.
- (f) Ms. Prajakta Deshmukh learned Advocate for the Applicant, undertakes to place this order before the

Special Judge on 06.04.2026.

- (g) The Secretary, High Court Legal Aid Services Committee, High Court Mumbai, to note the appointment of Ms. Sonal Dabholkar as an Advocate to represent Respondent No.2 in this Application under the Legal Aid Scheme and to pay her fees as per the rules.

10. Criminal Application No. 414 of 2026 is disposed of.

(ASHWIN D. BHOBE, J.)