

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 447 OF 2026
WITH
INTERIM APPLICATION NO. 1721 OF 2026

Shailendra Surendrabhai Rathod ...Appellant

Versus

The Sr. Police Inspector, Kashimira Police
Station And ors. ...Respondents

Mr. Mateen Shaikh, a/w Muskan Shaikh, for Appellant.
Ms. Rashmi Tendulkar, APP for the State–Respondent Nos.1&2.

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CORAM: N. J. JAMADAR, J.
DATED: 12th JUNE, 2026

PC:-

Criminal Appeal No.447/2026

1. Heard the learned Counsel for the appellant.
2. Admit.
3. Call R&P.
4. Issue notice to the respondents, for final disposal, returnable on 6th August, 2026.
5. The learned APP waives notice for the State – respondent Nos.1 and 2.
6. Respondent No.3 victim be served through the Police Inspector, Kashimira Police Station, Thane.

7. The appellant shall furnish a copy of the appeal-memo to the Kashimira Police Station, for service of notice to respondent No.3.

8. The Police Inspector, Kashimira Police Station, shall serve the respondent No.3 and file report of service on or before the next date.

IA/1721/2026

9. This is an application for suspension of sentence imposed by the learned Special Judge in Special (POCSO) Case No.259/2019.

10. By the impugned judgment and order, the learned Special Judge has convicted the appellant – applicant for an offence punishable under Section 323 of the Indian Penal Code, 1860 (“Penal Code”) only. The applicant has been acquitted of the offences punishable under Section 354A(1)(i) of the Penal Code and Section 8 of the Protection of Children from Sexual Offences Act, 2012 (“POCSO Act, 2012”). For the offence punishable under Section 323 of the Penal Code, the applicant has been sentenced to suffer rigorous imprisonment for three years.

11. The learned Counsel for the applicant submitted that the learned Special Judge has committed a grave error in law in not

extending the benefit of the period for which the applicant was in custody as an under-trial prisoner. It was submitted that the applicant has already undergone six months imprisonment as an under-trial prisoner and despite the said fact having been brought to the notice of the Court, the learned Special Judge declined to grant set off.

12. The provisions contained in Section 468 of the Bharatiya Nagarik Suraksha Sanhita, 2023, (“BNSS”) (corresponding to Section 428 of the Code of Criminal Procedure, 1973) are peremptory in nature. Where an accused person has, on conviction, been sentenced to imprisonment for a term, the period of detention undergone by the accused as an under-trial prisoner, shall be set off against the term of imprisonment so imposed on him. The trial Court was thus enjoined to extend the benefit of set off. The learned Special Judge was clearly in error in declining to grant the set off as if the Court had discretion in the matter of extending the benefit of the set off.

13. On this count alone, the sentence of imprisonment deserves to be suspended and the applicant released on bail.

14. Hence, the following order:

: O R D E R :

- (i) The application stands allowed.
- (ii) The sentence imposed by the learned Special Judge in Special (POCSO) Case No.259/2019, arising out of CR No.301/2019, registered with Kashimira Police Station, Thane, stands suspended till the final disposal of the appeal.
- (iii) The applicant be enlarged on bail on furnishing a PR Bond in the sum of Rs.15,000/- and, a surety in the like amount or cash security of Rs.15,000/- in lieu of personal surety.

The application stands disposed.

[N. J. JAMADAR, J.]