



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1237 OF 2026
IN CRIMINAL APPEAL NO. 137 OF 2026

Yadav Bandabhoi Battalwad,
Age : 50 years, Occ : Agriculture & Labour,
R/o Anjani, Taluka Biloli, District Nanded.
At present Jaibhim Nagar, Ramtirth,
Taluka Biloli, District Nanded.

... Applicant

Versus

1. The State of Maharashtra

2. X. Y. Z.

... Respondents

.....

Mr. Nilesh S. Ghanekar, Advocate for the Applicant.
Mrs. A. S. Mantri, APP for the Respondent No.1/State.
Mr. Prajakta P. Deshmukh, Advocate for Respondent No.2
(appointed)

.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 03.09.2026

Pronounced on : 04.09.2026

ORDER :

1. Instant application under Section 389 of Cr.P.C. is for suspension of sentence and grant of bail by virtue of conviction awarded by learned Additional Sessions Judge/Special Court, Biloli dated 06.06.2024 in Special Case No. 38 of 2021 recording guilt for offence under Sections 376(2)(n), 506 Part-II of IPC and Sections 4, 6, and 10 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

2. Learned counsel for the applicant pointed out that applicant was chargesheeted for above offences and he stood convicted by the above judgment and order dated 06.06.2024. According to him, appeal has been preferred against said judgment and order of conviction and during its pendency, present application for suspension of sentence and grant of bail is pressed into service.

3. He further elaborated that, at the outset, though there were charges and indictment for offence under the provisions of the POCSO Act, here, there was no conclusive proof on the point of age of victim. Thus, according to him, aspect of age and minority goes to the very root of prosecution case. He would submit that, prosecution case in trial court is rested on the evidence of four witnesses. That, on the point of age, there is evidence of only victim and school authority i.e. Head Master. According to him, birth certificate is not placed on record and what is relied by prosecution in trial court is school admission extract. However, he would point out that it is also not of the 1st standard of the victim and rather is it of 5th standard. That, parents of the victim are also not examined. Moreover, victim in her cross, apart from admitting consensual acts, gave her year of birth as 2000 and going by the same, with reference to alleged date of occurrence, she was not minor.

4. He pointed out that, even no ossification test was conducted to medically ascertain the age of victim and thereby he questions prosecution story about victim to be 15 years of age. On this count, he invited attention of this Court to the cross of victim.

5. He would further submit that, reporting is after pregnancy and at no point of time prior to it, and therefore, according to him, there are debatable questions and issues to be dealt at appeal. That, above referred questions are crucial and go to the very root of the case. However, as appeal will take long time to be heard, it being of 2026, he urges for suspension of sentence and grant of bail. Reliance is sought on the judgment of *P. Yuvaprakash v. State Rep. By Inspector of Police* 2023 LiveLaw (SC) 538.

6. Learned APP, as well as learned counsel appointed to represent respondent no.2-victim, would strongly oppose on the ground that, conviction has been recorded on full-fledge trial. That, there is overwhelming and convincing evidence on the point of age. That, school authority has been examined who had placed admission extract on record. That, date of birth of victim is 15.04.2004 and as occurrence was of 01.12.2020, according to them, victim was below 18 years of age and the same is rightly appreciated by learned trial

court. Serious offence being proved beyond hilt, application is sought to be rejected.

7. Heard. Perused the record. Charge against the applicant is at page 35 of the appeal memo. Prosecution was launched against the appellant for the above referred charges, who is said to be cousin grandfather of the victim. Case of prosecution was that on 01.12.2020, victim was dragged in the field and there was forcible sexual intercourse on five to seven occasions. She was said to be impregnated. On her report, crime seems to have been registered, investigated and finally applicant was chargesheeted and tried by learned Special Court, who recorded guilt of the accused for above said offences, against which appeal bearing Criminal Appeal No. 137 of 2026 is pending before this Court.

8. Now, sentence is sought to be suspended coupled with relief of bail, and principal ground put forth for the same is that, prosecution has no conclusive proof on the point of age of victim. Admittedly, case of prosecution in trial court seems to be rested on testimony of four witnesses, i.e. PW1 informant-victim, PW2 Investigating Officer, PW3 Head Master and PW4 Chemical Analyzer.

9. There being charges under the POCSO Act, it is indeed incumbent upon prosecution to substantiate by adducing cogent, reliable, convincing and conclusive evidence on the point of minority of the victim. This primary and fundamental burden is required to be discharged by prosecution.

10. It is also settled position that while dealing with suspension of sentence and grant of bail, no detail inquiry is expected from the court and court cannot take a deep dive into the evidence of prosecution at this stage. But offences under the POCSO Act are stringent, obviously strict proof on the point of age is called for. As submitted, biological parents are not examined. Therefore, what remains for consideration is testimony of victim PW1 and school authority PW3.

11. PW3 seems to have placed on record Exhibit 41, but as pointed out, this admission extract is of the victim while she was admitted in 5th standard and not 1st standard, which is generally relied for determination of age in view of settled judicial precedent. As stated, neither birth certificate of victim is gathered, nor her parents are examined.

12. PW1 victim, as pointed out, though gave her date of birth as 15.04.2004, in para 5 of her cross, she admitted that, she does not have birth certificate. In para 9, she admitted having sexual intercourse with her own consent.

13. Therefore, here, indeed, there is no conclusive proof on the point of age of victim.

14. Resultantly, here, as submitted, minority of the victim being crucial, and it goes to the root of prosecution case, in the light of above discussion, there seems to be an arguable question regarding victim's age, of which a doubt has been successfully raised. This point has bearing on the very conviction for offences under the provisions of POCSO Act.

15. On the aspect as to whether issue of age can be dealt at the stage of suspension of sentence, reliance can be placed on the very recent judgment of the Hon'ble Apex Court in the case of ***Ashish Kumar @ Monu and another v. State of Rajasthan*** [SLP (Cri) 12919/2026 decided on 03.08.2026]. The relevant observations are borrowed and reproduced here, which are as under :

*“5. Having heard learned counsel for both parties and having perused the material on record, without expressing any final opinion on the merits of the appeal, we are of the considered view that a prima facie case for suspension of sentence is made out, given the custody period undergone, absence of prior antecedents, and the **arguable legal issue raised regarding the age determination of the victim**” (emphasis laid).*

16. Relying on the above recent observations of the Hon’ble Apex Court, and in view of the above discussion, here also, there being no criminal antecedents, applicant being behind bars since almost two years (as judgment is rendered on 06.06.2024) and there being no immediate prospects of hearing the appeal, relief as prayed deserves to be granted. Hence, the following order :

ORDER

- I. Criminal Application stands allowed.
- II. The substantive sentence imposed on the applicant Yadav Bandabhoi Battalwad in Special Case No. 38 of 2021 by learned Additional Sessions Judge/Special Court, Biloli on 06.06.2024 stands suspended till the final hearing and disposal of Criminal Appeal No. 137 of 2026.
- III. The applicant be released on P.R. Bond of Rs.15,000/- (Rupees Fifteen Thousand Only) with two solvent sureties in the like amount.

- IV. The applicant shall not commit any criminal activity.
- V. The applicant shall remain present before the learned trial Judge once in six months, till final hearing and disposal of the appeal, commencing from the date he tenders bail papers and thereafter, the trial Judge to fix dates for his subsequent appearances.
- VI. In case of two consecutive defaults on the part of the applicant to remain present before the trial court, the trial court to inform this court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of bail granted to the applicant.
- VII. Bail before the trial court.
- VIII. Fees of the learned counsel appointed to represent respondent no.2-victim shall be paid by the High Court Legal Services Sub-Committee, Aurangabad, as per Rules.

[ABHAY S. WAGHWASE, J.]

vre