



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO. 3662 OF 2026
IN APPEAL/937/2025**

. Onkar s/o Tanaji Kale
Age: 24 years, Occu.: Student,
R/o. Police Line, Osmanabad. Applicant

Versus

1. The State of Maharashtra
(Through Kalamnuri Police Station
Hingoli).
2. X.Y.Z. Respondent

.....
Mr.Nilesh S. Ghanekar, Advocate for Appellant.
Mrs.Chaitali Chaudhari Kutti, APP for Respondent No.1
Mr.Shridhar K. Kulkarni Advocate for Respondent No.2.
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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 24 September, 2026
Pronounced on : 28 September, 2026

ORDER :

1. Instant application is for suspension of sentence and grant of bail in consequence to Judgment and order of conviction passed by learned Judge, Special Fast Tract Court, Dharashiv dated 24-11-2025 in Special Case No.16 of 2024.

2. Learned counsel for applicant apprised this Court about prosecution story in the trial Court. He would submit that, here, there was no conclusive proof on the point of minority of victim. He submitted that, though PW1 father of victim is examined by prosecution and through him birth certificate is brought on record, he would submit that, at the outset, it was not open for the prosecution to examine father of victim as he himself was arraigned as accused in this case. Pointing out to this Court charge framed before learned trial Court, he would submit that, law does not permit accused to act as a witness of prosecution. On this count, he seeks reliance on the judgment of the Hon'ble Supreme Court in the case of *State of Maharashtra v. Abu Salem Abdul Kayyum Ansari and Others*, 2010 (7) Supreme 226 and Judgment of Hon'ble High Court of Kerala passed in *Abdul Razak @ Abu Ahmed v. Union of India and Others* in Criminal MC No.2917 of 2021 on 25-08-2021, and would submit that, it was not permissible for prosecution to adduce evidence of accused No.2, who is PW1 unless he was declared as an "approver" as required under Section 306/307 of the Code of Criminal Procedure. That, no such procedure was adopted by prosecution in learned trial Court and therefore, it is his submission that evidence of PW1 father of victim on the point of age of his daughter needs to be excluded from consideration.

3. He further submitted that, another piece of evidence on the point of age was testimony of PW4 Head Master, but he would point out that, he has placed on record school record of 7th Standard and not of 1st standard and moreover, school leaving certificate does not qualify for consideration on the point of age. It is also his submission that name of the victim appearing in FIR varies from the name reflected in the birth certificate and even though there is affidavit of father, he himself being an accused, any document coming from his custody cannot be gone into. Thus, according to him, when entire judgment of learned trial Court is based on above quality of evidence, which is inadmissible or not permitted, appellant has questioned the impugned judgment by preferring appeal, but as it may take sufficiently long time to be heard and decided, and moreover, as it goes to very root of the case of prosecution and a strong point to be dealt in appeal, he urges for suspension of sentence.

4. Learned APP opposed above application and relief on the ground that on full-fledged trial, conviction has been recorded. That, serious offence is proved to be committed. That, issue about age raised here needs complete re-appreciation of evidence, which cannot be done at the stage of bail or suspension of sentence. According to her, in view of Judgments of the Hon'ble Apex Court in the cases of

Kamalanantha and Others v. State of T.N., 2005 AIR SCW 1836 and *Sushil Kumar Tiwari v. Hare Ram Sah and Others*. AIR 2025 SC 4828, as well as in view of provisions laid down under Section 465 of the Code of Criminal Procedure, the above ground has no substance and moreover, according to her, no such objection was raised before the learned trial Court and therefore, it is not permissible to raise such objection now.

5. Learned counsel for respondent No.2/victim also put up resistance to the application and relief by pointing out that, serious offence is proved to be committed. That, prosecution has placed on record birth certificate at Exhibit 56 reflecting the date of birth of victim and going by the same and date of occurrence, victim was apparently below 16 years of age. According to him, there is conclusive proof on the point of age of victim. Moreover, victim was threatened to not to appear in the Court and regarding that complaint has been also forwarded to the Police, copy of which is placed on record and considering such conduct of accused, he submits that for the said reason also, relief cannot be granted as there is high possibility of misuse of liberty.

6. Heard. Perused the record.

7. Present application is for suspension of sentence and grant of bail as a result of Judgment and order of conviction rendered by learned Judge, Special Fast Tract Court against which appeal has been preferred and the same is pending. From above submissions, it is emerging that, relief of suspension of sentence and grant of bail is primarily based on prosecution's evidence on the minority of victim. An interesting point has been raised by learned counsel for applicant that birth certificate has come through PW1 father of victim, but according to him, he is disqualified from being prosecution witness, he himself being arraigned as accused.

8. True it is that going by above referred judgments, prosecution ought not to have adduced evidence of PW1 father as he apparently was facing charge for commission of offence under Sections 10 and 11 of the Prohibition of Child Marriage Act. This being the admitted position, prosecution was not permitted to adduce his testimony unless he was declared as an "approver" i.e. by complying procedure Section 306/307 of the Code of Criminal Procedure. However, here father's evidence is not the only evidence on the point of age. PW11 Dinkar Shivajirao Gore, Investigating Officer in his evidence at Exhibit 107 in paragraph 14 has testified that birth certificate of victim at Exhibit 56 was obtained during investigation of crime. The said

Exhibit 56 gives date of birth of victim and it is a certificate issued by Local Body and therefore, it does qualify for consideration on the point of age. Mere slight variation in the name of victim in FIR and the one reflected in birth certificate itself is not a good ground to preclude such evidence from consideration. Victim, who is examined as PW3, apart from giving her own date of birth, which matches with the date of birth reflected in birth certificate Exhibit 56, in paragraph 17, has narrated the events of kidnapping her in a vehicle, being taken to Panvel and there in a room committing forcible penetrative sexual assault on her. On complete appreciation of evidence, guilt has been recorded by the learned trial Court.

Considering the seriousness of crime, which is substantiated by prosecution, this Court does not find any merit in the application. Therefore, application deserves to be rejected. Accordingly, following order is passed :

ORDER

Criminal Application is rejected.

[ABHAY S. WAGHWASE, J.]