



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3921 OF 2025
IN CRIMINAL APPEAL NO. 789 OF 2025

Manoj s/o. Laxman Routre
Age 21 years, Occu. Water Supplier,
R/o. Gavli Lane, Purna,
Taluka Purna, District Parbhani.

... Appellant.

Versus

1. The State of Maharashtra
Through Police Station,
Purna Police Station,
Taluka Purna, District Parbhani.

2. XYZ

... Respondents.

.....

Mr. Sanket S. Kulkarni, Advocate for the Applicant.

Mr. G. O. Wattamwar, APP for Respondent No.1-State.

Ms. Sumedha Thombre, Advocate for Respondent No.2 (appointed)

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CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 24.09.2026

Pronounced on : 28.09.2026

ORDER :

1. Instant application is for suspension of substantive sentence and grant of bail in consequence to the judgment and order of conviction dated 12.02.2025 passed by learned Special/Additional Sessions Judge, Parbhani in Special (POCSO) Case No. 34 of 2022 recording guilt of the applicant for offence under Section 376(2)(l) of IPC.

2. Learned counsel for the applicant would submit that there is false implication. According to him, there was no legally acceptable evidence to convict applicant for charge of Section 376(2)(l) of IPC. He pointed out that, though applicant was tried for charges under Section 376(2)(l) of IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act), there is conviction only for offence under Section 376(2)(l) of IPC and not under the provisions of the POCSO Act. He would submit that here, there is no conclusive proof of age of the victim. That, though victim was claimed to be mentally challenged, there is no conclusive proof regarding the same and psychiatrist/psychologist are not examined. Mere provisional certificate is placed on record. Moreover, according to him, though DNA report is placed on record, the same is directly exhibited through the Investigating Officer who was not the authority to vouch on the contents of the DNA report. That, in fact, the forensic/DNA analyst who issued the report ought to have been examined by prosecution, but said witness is not examined, which is fatal to the prosecution. He also questions the chain of custody of DNA samples and doubts its integrity for want of sufficient proof of the same being retained untampered. Thus, according to him, there are several good grounds which are to be dealt in appeal and as the

same would take sufficiently long to be heard and decided, he prays for relief of suspension of sentence and grant of bail.

3. Learned APP as well as learned counsel for the victim have both opposed on the ground that, on full fledged trial, conviction has been recorded by accepting the case of prosecution. That, prosecution has proved that victim was mentally challenged. That, accused, who was in relation, was aware of her such mental condition and he took disadvantage of the same. That, sexual offence is proved through DNA report which is positive. Therefore, there is scientific evidence confirming guilt of the accused and for such reasons, relief of suspension of sentence and grant of bail is opposed.

4. Perused the papers. Admittedly, charge was for offence under Section 376(2)(1) of IPC and Section 4 of the POCSO Act. On visiting the operative part of the order, there seems to be guilt recorded for only offence under Section 376(2)(1) of IPC and guilt is not recorded for offence under Section 4 of the POCSO Act. Even otherwise, in para 13 of its judgment, learned trial court has already held that prosecution failed to prove victim to be minor on the date of incident. Therefore, there is no conviction for offence under Section 4 of the POCSO Act.

5. As regards to sexual offence under Section 376(2)(l) is concerned, case of prosecution in trial court was that victim was mentally challenged. Accused, her cousin, who knew her such condition, exploited her and impregnated her. That, DNA sample of the child born to victim and the DNA sample of accused matched and therefore trial court recorded conviction for above charge.

6. Here, the above conviction is challenged by way of appeal, but during its pendency, relief of suspension of sentence and grant of bail is urged for primarily on the ground that, prosecution did not prove sexual assault beyond reasonable doubt. That, there is no conclusive proof about mental state of the victim and secondly, DNA expert is not examined for getting DNA report exhibited.

7. Learned counsel for the applicant would strenuously submit that, after evidence of prosecution was over and after recording statement of accused under Section 313 of Cr.P.C., prosecution's application for production of DNA report came to be allowed without say of the accused.

8. In the light of above grounds, record is gone into. PW5 seems to be the medical expert who has gathered and collected DNA

samples of the victim and her child on 14.10.2019. This witness speaks of handing over samples in sealed condition to the police. This means that samples were handed over to the investigating machinery on 14.10.2019 itself. Exhibit 86 shows that analyzer received sample of victim on 23.10.2019 and analysis was done on 31.10.2019, but report is issued on 03.12.2019. Similarly, DNA sample of accused is got collected through PW9 on 30.10.2019, but Exhibit 87 shows receipt of sample for analysis at Forensic Laboratory on 02.11.2019. Admittedly, here, carrier is not examined to substantiate dispatch of *muddemal* in sealed condition till it reached analyzer. Investigating Officer has not named the authority who was in possession of DNA samples since they were drawn by doctors and handed over to police. Resultantly, there is issue about integrity and chain of custody of the DNA samples.

9. Further, DNA report, as pointed out, is got exhibited through Investigating Officer PW10. Recently the Hon'ble Apex Court has issued guidelines regarding sampling procedure and evidentiary value of scientific evidence. In the case of ***Karandeep Sharma v State of Uttarakhand***, MANU/SC/0446/2025 acquitted the accused from the charges under Section 376-A alongwith other penal sections holding that, in order to make DNA evidence acceptable, reliable and

admissible, prosecution would first be required to prove the chain of custody of samples/articles right from their preparation/collection till they reach the FSL. For this purpose, it is held that, link evidence would have to be established by examining concerned witness.

10. Likewise in another recent judgment by the Hon'ble Apex Court in ***Irfan v. State of Madhya Pradesh*** MANU/SC/0148/2025 in para 22 observed as under :

“22. It is an admitted position that the DNA profiling report (Exhibit-157) was formally exhibited by the Superintendent of Police (PW-31) in his evidence. None of the scientific experts involved in the process of conducting the DNA profiling examination and issuing the report have been examined by the prosecution.”

Finally, the Hon'ble Apex Court remanded the matter back to the trial court with directions to summon scientific expert associated with the preparation and issuance of DNA report and thereby set aside judgments passed by both, trial court as well as High Court.

11. Here also, it is seen that DNA expert who issued report Exhibit 87 is not examined before getting the report exhibited. Apparently it is got exhibited through the Investigating Officer.

12. Further, as regards to mental disability of the victim is concerned, as pointed out, none of the doctors who certified her mental disability are examined before the trial court by the prosecution. As pointed out, it appears from the record that after recording statement of accused under Section 313 of Cr.P.C. was concluded on 26.09.2024, an application seems to have been moved by learned APP on behalf of the State on 13.12.2024 praying to accept the psychiatric report and to get it exhibited. Though there is remark by trial court calling upon other side to submit say, there does not seem to be any say by defence/accused. Even otherwise, as pointed out, the psychiatric report Exhibit 104 is apparently provisional impression report. Surprisingly, in the said report, age of the victim is shown as 25 years and not 15 years as was the case of prosecution in trial court.

13. In the light of above discussion, indeed there seem to be good grounds but to be dealt in appeal. The above shortcomings do go to the core of the prosecution case. Resultantly, 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 Manoj s/o. Laxman Routre in Special (POCSO) Case No. 34 of 2022 by the Special/Additional Sessions Judge, Parbhani on 12.02.2025 stands suspended till the final hearing and disposal of Criminal Appeal No. 789 of 2025.
- 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.

[ABHAY S. WAGHWASE, J.]