

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 910 OF 2026
IN
APPEAL NO. 273 OF 2026

Chandrakant Bhiku Nibude ..Applicant
Versus
The State of Maharashtra And Anr ...Respondents

Mr. Om N Latpate, with Pratik V Shinde and Riddhi N Darade, for the
Applicant/Appellant.
Smt. R.S.Tendulkar, APP, for Respondent No.1-State.

CORAM: N. J. JAMADAR, J.
DATE : 1st OCTOBER 2026

P.C.:

APPEAL NO. 273 OF 2026:

1. Heard.
2. Admit.
3. Call R & P

INTERIM APPLICATION NO. 910 OF 2026 :

4. Heard Mr. Om Latpate, the learned Counsel for the Applicant, and
Smt. R.S. Tendulkar, the leaned APP, for Respondent No.1-State.
5. This is an Application for suspension of sentence and to enlarge
the Applicant on bail.

ARS

6. By a judgment and order dated 5th February 2026 in Session Case No. 1130 of 2019, passed by the learned Sessions Judge, Pune, the Applicant has been found guilty of the offences punishable under Sections 376 (2)(f) and 506 of the Indian Penal Code, 1860 (“the Penal Code”) and sentenced to suffer Rigorous Imprisonment for a term of 10 years and pay a fine of Rs.10,000/- for the major offence punishable under Section 376 (2) (f) of the Penal Code.

7. The gravamen of indictment against the Applicant is that, the prosecutrix, who was then 75 years of age, was his aunt. The prosecutrix was residing alongwith her daughter in law (PW-6). On 18th September 2019, the Applicant had taken the prosecutrix to a Doctor at Kolvan, as she was unwell. On their way back, the Applicant took the prosecutrix to an under construction house premises of her son. The Applicant allegedly stuffed the handkerchief in the mouth of the prosecutrix and, thereafter, committed rape. The Applicant also threatened the prosecutrix with dire consequences if she disclosed the incident. Upon her return to home, the prosecutrix narrated the incident to her daughter-in-law (PW-6), who, in turn, related the incident to the son of the prosecutrix (PW-3).

8. The prosecutrix passed away during the pendency of the trial. However, on the basis of the testimonies of the son of the prosecutrix (PW-3), her daughter in law (PW-6) and the Medical Officer (PW-5), the

learned Sessions Judge was persuaded to return finding of guilt against the Applicant and sentence him, as indicated above.

9. Mr. Om Latpate, the learned Counsel for the Applicant, submitted that, the prosecutrix was then 75 years of age and the Applicant was also 57 years of age. On account of the disputes that had arisen between the son of the prosecutrix and the Applicant, the latter came to be falsely prosecuted. The testimony of the daughter in law of the prosecutrix (PW-6) is unworthy of credence. In the absence of legal evidence, the learned Sessions Judge has convicted the Applicant on the basis of surmises and conjectures.

10. In opposition to this, Smt. R.S. Tendulkar, the learned APP, resisted the submissions on behalf of the Applicant. Attention of the Court was invited to the testimony of the panch witness (PW-1), who witnessed the scene of occurrence panchnama and seizure of the handkerchief of the Applicant and the spectacle of the deceased - prosecutrix from the scene of occurrence. It was further submitted that the testimonies of son (PW-3) and daughter-in-law (PW-6) of the prosecutrix found requisite support in the medical evidence. Emphasis was laid on the fact that three external injuries were found in the person of the prosecutrix. Therefore, according to the learned APP, the learned Sessions Judge was justified in returning a finding of guilt against the Applicant.

11. I have carefully perused the material on record. It is trite, at the stage of consideration of a prayer for suspension of sentence, the Appellate Court is not expected to evaluate the evidence meticulously. A broad view of the matter is required to be taken. The evidence adduced by the prosecution cannot be appreciated with a view to find out lacunae, loopholes or shortcomings in the prosecution case. Instead, the Appellate Court is required to examine whether the Appellant succeeds in making out such a *prima facie* case that he can be said to have a chance of success in the Appeal.

12. At the same time, where the convict is sentenced to suffer a fixed term of sentence, and it is unlikely that the Appeal can be heard and decided expeditiously, the Appellate Court is required to exercise the discretion to suspend the sentence and enlarge the Applicant on bail during the pendency of the Appeal liberally, unless there are exceptional circumstances.

13. Keeping the aforesaid twin postulates in view, if the material on record is appraised, evidently, in the absence of the evidence of the prosecutrix, the fate of the prosecution case hinged upon the testimony of PW-6, who deposed that the prosecutrix had narrated to her the sexual assault perpetrated by the Applicant. It was PW-6, who had apprised PW-3 about the said incident.

14. If the testimony of PW-6 is perused, it *prima facie* appears debatable where implicit reliance could have been placed on her testimony. PW-3 conceded in the cross-examination that, the incident which she came to know from the people was deposed to by her before the Court. This admission, *prima facie*, dents the claim of PW-6 that, she had deposed the incident as narrated to her by the prosecutrix.

15. It is true, the Medical Officer (PW-5) has deposed that she had found external injuries on person of the prosecutrix and, in her opinion, there was evidence of vaginal intercourse. However, the probabilities of the case, especially in the light of the age of the prosecutrix, will also be required to be examined at the time of final adjudication of the Appeal.

16. The Applicant was an under-trial prisoner from 18th September 2019 to 21st May 2023, and the Applicant has been undergoing the sentence since April 2026. In effect, the Applicant has undergone a sentence of about four years and four months. The Applicant is stated to be of 63 years of age.

17. The aforesaid factors also bear upon the exercise of discretion. This Appeal is of the year 2026. Having regard to the large pendency of the cases, it is extremely unlikely that, this Appeal can be heard and decided expeditiously in near future. Cumulatively, the exercise of discretion to suspend the sentence and enlarge the Applicant on bail appears to be justifiable.

18. Hence, the following order:

: O R D E R:

- (i) Application stands allowed.
- (ii) The substantive sentence imposed on the Applicant, Chandrakant Bhiku Nibude, by the learned Additional Sessions Judge, Pune, in Sessions Case No. 1130 of 2019 arising out of Crime No. 418/2019, Paud Police Station, Pune, 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.25,000/- and one or two sureties in the like amount, to the satisfaction of the learned Additional Sessions Judge.
- (iv) The Applicant shall not contact, or give threat to, the first informant and the witnesses examined by the prosecution.
- (v) The Applicant shall not enter the limits of Mulshi Taluka, District Pune, for a period of three years from the date of his release on bail, or till the final disposal of the Appeal, whichever is earlier.
- (vi) Upon being released on bail, the applicant shall furnish his address(es) and contact number to the

Investigating Officer and keep him informed in case of any change therein.

(vii) The Applicant shall mark his presence at Paud Police Station, District Pune, on the first Monday of November and May, every year, till the final disposal of the Appeal.

Application disposed.

[N. J. JAMADAR, J.]