



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

908 CRIMINAL APPLICATION NO.1969 OF 2025
IN
CRIMINAL APPEAL NO.414 OF 2025

Balaji S/o Madhavrao Whande,
Age: 31 years, Occu : Labour.
R/o. Tuppa,
Tq. & Dist: Nanded.

.... Applicant

Versus

The State of Maharashtra and Anr.

.... Respondents

.....

Mr. Vaibhav B. Dhage, Advocate for the Applicant
Ms. A. S. Deshmukh, Advocate for Respondent No.1 – State
Mr. R. K. Khandelwal, Advocate (Appointed) for Respondent No.2

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CORAM : NEERAJ P. DHOTE, J.

DATE : 25.11.2025

PER COURT :

[I] Order in Criminal Application :

1. This is the Application for suspension of sentence awarded by the learned Sessions Judge, Nanded (for short 'the learned Trial Court') by Judgment and Order dated 23/04/2025, in Special (POCSO) Case No.154/2023, convicting the Applicant - Appellant as follows :

1. Accused **Balaji Madhavrao Whande** is found guilty and convicted for offences under Section 376, 376-AB of Indian Penal Code and the offences punishable under Section 4, 6 and 8 of Protection of Children from Sexual Offences Act, 2012 vide Section 235(2) of Cr.P.C.
2. He is sentenced to suffer **simple imprisonment** for a term of **20 years** (twenty years) and to pay fine of Rs.10,000/- (Rupees Ten Thousand

only) and in default of payment of fine he shall suffer simple imprisonment of 5 years (five years) for the offence punishable under Section 4 of Protection of Children from Sexual Offences Act, 2012.

3. Further, he is sentenced to suffer **simple imprisonment** of 20 years (Twenty years) and to pay fine of Rs.10,000/- (Rupees Ten Thousand only) and in default of payment of fine he shall suffer simple imprisonment of 5 years (five years) for the offence punishable under Section 6 of Protection of Children from Sexual Offences Act, 2012.
4. He is sentenced to suffer **simple imprisonment** of 3 years (three years) and to pay fine of Rs.5,000/- (Rupees five Thousand only) and in default of payment of fine he shall suffer simple imprisonment of 8 months (eight months) for the offence punishable under Section 8 of Protection of Children from Sexual Offences Act, 2012.
5. In view of Section 42 of POCSO Act, no separate sentence is awarded for the offences punishable under Section 376 and 376-AB of Indian Penal Code.
6. All sentences shall run concurrently.
7. Accused is entitled to have set off under Section 428 of Cr.P.C. for the period in which he was under detention.
8. After deposit of fine amount by the accused, it shall be paid to victim after expiry of appeal period.
9. Muddemal properties i.e. **Article-A-** A fruit of Almond (Badam), **Article-B-** Yellow coloured Bedsheet, **Article-C-**Dull ash coloured half pant of victim, **Article-D-**Peacock colour nicker of victim, **Article-E-** green like parrot coloured T-shirt of victim, **Article-F-** Brown coloured underwear of accused, **Article-G-** Chocklet coloured Baniyan of accused, **Article-H-** Black Coloured T-shirt, **Article-I-** Navy-blue coloured pant of accused etc., being worth less be destroyed after expiry of appeal period.
10. Copy of Judgment be provided to accused free of cost.
(Judgment dictated and pronounced in open court).

2. The case of Prosecution as seen from Paragraph No.2 of the impugned Judgment is as under :-

“2. Factual score :

- a) Victim, a minor girl of 6 years who resides with her parents at Tuppa, District Nanded. She studies in Shambhavi International School, Chandasingh Corner, Balirampur in 1st standard.

b) On 20/09/2023, in the morning as usual she went to her school. In the noon at about 1:30 p.m., she returned to home. At about 2:00 p.m., she went to play at Raje Chhatrapati Sarvajanik Ganesh Mandal. Her mother and grandmother were at her house. After sometime, victim returned to home weeping. On asking, she informed that Balu Uncle (accused) lifted her by saying that he will give small Ganpati and took at his house. He closed door of his house. Made her to sleep on cot, removed her nicker and he inserted his fingers in her private part. Due to pains she raised shout and asked accused to leave her. At that time, accused licked her private part. Accused threatened her not to disclose incident to anybody. Since, she was crying therefore, accused opened the door of his house and therefore she came to house. Her mother and grandmother took him at the house of the accused Balaji Whande however, his house was found locked. Then her mother by making phone call informed about incident to victim's father, uncle and grandfather.

c) Then on 20/09/2023 itself, victim's mother i.e. PW-1 lodged report which was registered by the then PSI Smt. S. S. Pimparkhede upon which PSO concerned registered crime No.680/2023 for the offences punishable under Section 376, 376-AB of IPC and the offences punishable under Section 4,6 and 8 of POCSO Act.

3. After full-fledged trial, the learned Trial Court had convicted and sentenced the Applicant as above.

4. It is submitted by the learned Advocate for the Applicant – Appellant that, even if the case of the Prosecution is accepted as it is, it

would not travel beyond the offence punishable under Section 7 of the Protection of Children from Sexual Offences Act, 2012 [for short ‘the POCSO’], i.e. sexual assault. He submits that, the medical evidence brought on record do not corroborate the testimony of the victim. He submits that, the sentence be suspended and the Applicant be released on bail during pendency of the Appeal. In support of his submission, he relied on the Judgments in *Laxman Jangde Vs. State of Chaattisgarh* dated 10/09/2025 by the Hon’ble Supreme Court of India in Criminal Appeal arising out of SLP (Cri.) No.10377/2025 and in *Mahadeo @ Mahadya Uttam Gonde Vs. State of Maharashtra and Another* dated 04/09/2024 in Criminal Appeal No.258/2022 of the Bombay High Court at Nagpur Bench.

5. It is submitted by the learned APP for Respondent No.1 – State that, the medical evidence on record supports the victim’s testimony and the conviction and sentence is properly recorded. He submits that, the Application be dismissed.

6. The learned Advocate for Respondent No.2 adopts the submissions made by the learned APP.

7. In *Laxman Jangde (Supra)*, it is observed that, right from the beginning by way of Complaint / FIR, subsequent deposition of the victim as also, the other witnesses, the so-called act of the Appellant will come under the purview of Section 354 of the Indian Penal Code, 1860 [for short ‘IPC’] and Section 9(m) of the POCSO Act. Therefore, the conviction was accordingly modified.

8. In *Mahadeo @ Mahadya Uttam Gonde (Supra)*, the case was for the offence punishable under Sections 4 and 10 of the POCSO and for the offence punishable under Section 377 of IPC. This Court held that, the evidence of the victim, who deposed that the Accused therein forcibly pushed him down on the ground, removed his pant, and inserted his penis into his anus, was not sufficient to believe.

9. Coming to the case at hand, the Prosecution had examined the victim, who was 6 years of age at the time of incident. In her evidence, she deposed of her taking away by the Appellant to his house and by removing her undergarments inserted his finger into her private part. She deposed that, it was paining and she shouted. The cross-examination of the victim show that, her statement was recorded on the same day. There is medical evidence on record in the nature of testimony of PW – 3 – Dr. Sharadkumar, who examined the victim. The medical evidence found redness and minimal abrasion near the Labia Minora. It is true that, it has come in the evidence of the said Medical Officer that, hymenal injury was old one. It is also come in the evidence of the said Medical Officer that, hymenal tears can be healed in 24 hours. It was healed and those were in five o'clock, 7 o'clock positions. However, the medical evidence positively speak of the hymenal injury on the victim. Further evidence of the Medical Officer show that, the provisional and final opinion and findings were consistent with sexual intercourse. This indicate that, the testimony of the victim was corroborated by the medical evidence. The medical history recorded by the Medical Officer is consistent with the testimony of the victim. The facts

in the evidence in the case at hand are different from the evidence of the cases relied upon by the learned Advocate for the Applicant – Appellant.

10. In view of the above, in my considered view, no case for suspension of sentence is made out. Hence, the following order:

ORDER

[I] Application is rejected.

[II] The fees of the learned Advocate Mr. R. K. Khandelwal appointed to represent Respondent No. 2 / victim is quantified at Rs.7,500/- [Rupees Seven Thousand Five Hundred], which shall be paid by the High Court Legal Services Sub-Committee, Aurangabad.

[II] Order in Criminal Appeal :

1. The Appeal was admitted in June – 2025 and the Record and Proceedings were called.

2. The Record and Proceedings are received without Paper-book. Therefore, the Record and Proceedings be sent back to the learned Trial Court for preparation of Paper-book and the same be remitted back within a period of four [04] weeks.

[NEERAJ P. DHOTE, J.]