



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO. 19 OF 2025 IN
CRIMINAL APPEAL NO. 17 OF 2025

Rupesh s/o Ishwar Puri Vs State of Maharashtra and another.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. N.S. Rathod, counsel for applicant/appellant.

Ms H.N. Prabhu, APP for respondent/State.

Mr. Yash P. Bage, counsel (appointed) for respondent No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 25/03/2025.

1. By preferring this application, the appellant is seeking suspension of sentence and releasing him on bail.
2. Heard learned counsel for the appellant, who submitted that the appellant was prosecuted for the offence punishable under Sections 376(1) and 376(3) of the Indian Penal Code, 1860 and under Sections 4,6,8 of the Protection of Children From Sexual Protection Act, 2012.
3. The prosecution case is that on 24/11/2022, the mother of the victim lodged a report alleging that her daughter has missed her period, therefore she was taken to a local doctor, and it was revealed that she is pregnant for eighteen months. Initially, the victim has not disclosed the name of the alleged person, therefore a report was lodged against the unknown person. During the investigation, the victim disclosed the name of the present applicant, and

therefore he was arrested. After completion of the investigation, the charge-sheet was submitted. The trial Court has conducted the trial, and on the basis of the evidence, the trial Court held the present appellant guilty of the offence punishable under Section 6 of the Protection of Children from Sexual Protection Act, 2012 and sentenced him to suffer rigorous imprisonment for 20 years and a fine of Rs. 10,000/- in default, to suffer rigorous imprisonment for one year.

4. Learned counsel for the appellant invited my attention towards the impugned judgment and submitted that the learned Sessions Judge has not considered that the DNA report exonerates the present appellant as the biological father of the victim's aborted fetus. Thus, the material evidence is not implicating the accused, as the appellant is the culprit of the said fact.

He further invited my attention towards evidence of the victim and the medical officer and submitted that it was the love affair between the victim and the present applicant, but there is no material to show that there was any physical action between the applicant and the victims. Thus, at this stage, there is sufficient material to show that appellant has every chance of success in the present appeal, and there is a fair chance of acquittal. Otherwise, if the sentence is executed and the appeal would take its own time, then irreparable loss will be caused to the present appellant. In view of that, the execution of the sentence be suspended.

5. Learned APP and learned counsel for the victim strongly opposed the same on the ground that the victim was a minor at the relevant time, her consent is not relevant. Her evidence and history narrated before the medical officer specifically state about the involvement of the present appellant. In view of that, the prayer for suspension of sentence deserves to be rejected.

6. After hearing both sides and on perusal of the entire evidence on record, admittedly, the DNA report exonerates the present appellant as the biological father of the child of the abortus of the victim, whereas the victim was included as the biological father of the said abortus. The evidence of the victim shows that initially she did not disclose the name of anybody to her mother, and subsequently, during the investigation, she disclosed the name of the present appellant. Except her bare statement, there is no other evidence to connect her claims, and the evidence nowhere shows any corroborating evidence to support the prosecution's case. Admittedly, at this stage, the re-appreciation of the evidence is not permissible however, what is to be seen is whether the case presented by the prosecution and accepted by the trial Court can be said to be a case in which the convict ultimately has fair chances of acquittal.

7. Learned counsel for the appellant has pointed from the impugned judgment as well as from the evidence that he has many arguable points in the present appeal.

8. This aspect is also considered by the Hon'ble Apex Court in the case of ***Omprakash Sahni vs Jai Shankar Chaudhary and another in Criminal Appeal Nos. 1331-1332 of 2023 decided on 02/05/2023***, wherein the Hon'ble Apex Court by referring the prevision decisions observed as follows;

Bearing in mind the aforesaid principles of law, the endeavour on the part of the Court, therefore, should be to see as to whether the case presented by the prosecution and accepted by the Trial Court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the above said question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually take very long for decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the Court can arrive at a prima facie satisfaction that the conviction may not be sustainable. The Appellate Court should not re-appreciate the evidence at the stage of Section 389 of the Cr.PC. and try to pick up few lacunas or loopholes here or there in the case of the prosecution. Such would not be a correct approach."

9. In the light of the above observations, of the Hon'ble Apex Court, the appellant has made out a case for grant of suspension of sentence. In view of that, I proceed to pass the following order.

- a] The criminal application is **allowed**.
- b] The execution of the sentence imposed in Special Criminal (Child) Case No. 34/2023 is hereby suspended till disposal of the appeal.
- c] The appellant shall be released on bail on executing P.R. Bond of Rs. 25,000/- with one surety of like amount.
- d] The appellant shall attend the proceedings in Extra Joint District Judge and Additional Sessions Judge (Special Judge, POCSO Court), Nagpur once in month on 5th of every month till disposal of the appeal.

10. The criminal application (APPA) No. 19/2025 is disposed of.

CRIMINAL APPEAL NO. 17 OF 2025

1. The criminal appeal is already admitted. The record and proceedings is already received.
2. The criminal appeal be listed before this Court after preparation of the paper-book.

[URMILA JOSHI-PHALKE, J.]