



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

CRIMINAL APPLICATION (APPA) NO.62 OF 2025
IN
CRIMINAL APPEAL NO.36 OF 2025

Tanvir Shaha Gulam Shaha

Vs.

State of Maharashtra, through Police Station Officer, Police Station,
Talengaon (Shamji Pant), District Wardha and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Abdul Subhan, Counsel for the applicant/appellant.
Ms. Ritu Sharma, APP for the respondent No.1/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 07/02/2025

1. By this application, the applicant is seeking suspension of sentence and releasing him on bail. The applicant is prosecuted for the offence punishable under Sections 376(2)(n), 506 of the Indian Penal Code and under Section 6 of the Protection of Children from Sexual Offences Act.

2. The crime is registered against the present applicant and other co-accused on the basis of report lodged by the parents of the victim on an allegation that the victim was attending the tuition class of the co-accused, who has subjected her for the sexual assault on multiple occasions, therefore, she was taken to the hospital for medical examination. During the medical examination, it reveals that she is

pregnant. She has delivered a child. During the investigation, the samples of the present applicant as well as other co-accused, victim and the samples of the child delivered by the victim are collected and forwarded to the DNA examination. After completion of the investigation, the charge-sheet is submitted against the accused/appellant. Learned Special Court by considering the scientific evidence against the present applicant convicted for the offence punishable under Section 6 of the Protection of Children from Sexual Offences Act and sentenced to suffer rigorous imprisonment for 10 years and fine of Rs.10,000/-, in default to suffer simple imprisonment for six months.

3. Being aggrieved and dissatisfied the same, the present appeal is preferred by the applicant on the ground that there is absolutely no evidence against him to connect with the alleged offence. The evidence of the victim is also silent as far as the sexual assault is concerned. It is further submitted that the history narrated before the Medical Officer shows that there was a love affair between the present applicant and the victim and out of a love affair, the physical relationship was there. Thus, considering the nature of the evidence, the applicant has every chance of success in the present appeal. The learned Special Court has not considered this aspect by convicting the present applicant and

therefore, the sentence be suspended and the applicant be released on bail.

4. Learned APP strongly opposed the said application and submitted that considering the victim is below 18 years, her consent is not relevant. The applicant was analyzed as the biological father of the foetus of the victim. Thus, considering the scientific evidence, there is material to connect the present applicant with the alleged offence. Considering the nature of the offence, the application deserves to be rejected.

5. After hearing both the sides and on perusal of the investigation papers as well as the evidence on record, it reveals that though the victim has denied that the present applicant has subjected her for sexual assault, but the history narrated by her before the Medical Officer and the DNA report specifically shows that the present applicant is the biological father of the foetus which is delivered by the victim. Learned Counsel has pointed out from the impugned judgment as well as the from the evidence that there was a love relationship, the victim was on the verge of attaining the majority. This fact is not considered by the learned Special Court. Thus, the applicant has many arguable points in the present appeal.

6. Considering the submissions and the evidence on record, at this stage, the applicant has

made out a case for suspension of sentence. In view of that the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

- (i) The application is allowed.
- (ii) The execution of the impugned sentence is suspended till disposal of the appeal.
- (iii) The applicant shall be released on bail on executing PR Bond in the sum of Rs.25,000/- with one solvent surety of the like amount.

The application is disposed of.

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- 1. Heard.
- 2. **Admit.**
- 3. Learned APP waives notice for the State.
- 4. Call for record and proceedings.
- 5. Appeal be listed for final disposal after preparation of the paper book.

(URMILA JOSHI-PHALKE, J.)