



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH : NAGPUR**  
**CRIMINAL APPLICATION (APPA) NO. 503 OF 2023 IN**  
**CRIMINAL APPEAL NO. 316 OF 2023**

Balya s/o Hari Damahe V/s State of Maharashtra and another

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

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Court's or Judge's Order

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Mr. Amol G. Hunge, counsel for appellant.  
Mrs. Sneha Dhote, APP for the respondent/State.  
Mrs. Kirti Deshpande, counsel (appointed)

**CORAM : URMILA JOSHI-PHALKE, J.**  
**DATED : 08/01/2025.**

1. By preferring this application, the appellant is seeking suspension of sentence and releasing the appellant on bail.
2. The appellant was prosecuted for the offence punishable under Sections 363, 376(2)(n), 376(3), 354(A), 354(D), and 506 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") and under Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as "POCSO Act").
3. On 22/03/2019, the informant, who is the father of the victim, had lodged the report on an allegation that on 22/03/2019, his minor daughter left the house on the pretext of attending the school and not returned back. He has taken search, but she was not found. On the basis of the said report, immediately the crime was registered under Section 363 of the IPC. During the investigation, the daughter was found along with the present appellant. A

statement was recorded, and the accused was arrested. After investigation, the charge-sheet was filed, and the trial was commenced. On the basis of the evidence, the trial court held the accused guilty of the offence punishable under Section 363 and sentenced him to suffer R.I. for one year and fine of Rs. 1,000/-, in default, S.I. for one month. The accused is further convicted for the offence punishable under Section 354-A(1)(i) of the IPC and sentenced to suffer R.I. for one year and pay fine of Rs.1000/- in default, S.I. for one month.

The accused is further convicted of the offence punishable under Section 354-D(1)(i) of the IPC, and similar punishment was imposed. The accused is further convicted of the offence punishable under Sections 4 and 6 of the POCSO Act and sentenced to suffer R.I. for ten years and fine of Rs. 3,000/-, in default, S.I. for three months.

4. Being aggrieved and dissatisfied with the same, the present appeal is preferred along with the application for suspension of sentence.

5. Heard learned counsel for the appellant, who submitted that from the deposition of the victim, it reveals that out of love affairs, she joined the company of the accused. Admittedly, the consent of the victim is not relevant, as she was a minor. But considering the facts and circumstances she joined the company, and there was a physical relationship between them. The appeal would take its own time for its final decision. In the meantime, if the sentence is executed, the appeal would become infructuous.

In view of that, the sentence be suspended and the appellant be released on bail.

6. The learned APP strongly opposed the present application and submitted that consent of the victim is not relevant. The offence is proved against the present appellant. In view of that, the appeal is devoid of merits, and hence the application deserves to be rejected.

7. The learned appointed counsel reiterated the said contention and submitted that though the victim has admitted that she has consented for having the love affair with the present accused, but the accused has threatened her and by threatening her, the accused subjected her for sexual assault. Therefore, the application deserves to be rejected.

8. Having heard the learned counsel for the appellant, the learned APP for the State, and the learned appointed counsel for the victim, perused the deposition and the impugned judgment. From the deposition, it reveals that there was a love affair between them. Out of love affair, she joined the company, and there was a physical relationship between them. Admittedly, at this stage, there should not be re-appreciation of the evidence, considering the application under Section 389 of the Code of Criminal Procedure. However, at this stage, the Court has to see whether the grounds are made out by the appellant to show that he has a good case and fair chance of acquittal. Considering the impugned judgment and the evidence on record, learned counsel for the appellant has pointed out many arguable

points in the present appeal. Admittedly, the appeal would take its own time for final disposal. In view of that, application deserves to be allowed. Accordingly, I proceed to pass the following order.

**ORDER**

- a. Application is allowed.
  - b. The execution of the sentence imposed in Special Case (Child Protection) No. 29/2019 is hereby suspended till disposal of the appeal.
  - c. The appellant shall be released on bail on executing P.R. Bond in the sum of Rs.25,000/- with one solvent surety in the like amount.
  - d. The fees of the appointed counsel be quantified as per Rule.
  - e. Learned counsel for the appellant shall place on record receipt of fine deposited.
9. The application (APPA) No. 503/2023 is **disposed of**.

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1. Record and Proceedings is already received.
2. Place the appeal before this Court after preparation of the paper book for final disposal.

[URMILA JOSHI-PHALKE, J.]