



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

Criminal Application (APPA) No. 499 of 2025

in

Criminal Appeal No. 279 of 2025

Roshan @ Kamlesh Vasanta Saratkar

Versus

State of Maharashtra through Police Station Officer, Police Station Mouda,
Dist. Nagpur

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

Court's or Judge's Order

Shri M.V.Rai, Advocate for the applicant.

Ms. S.N.Thakur, APP for the non-applicant/State.

Ms. Garima Jain, Advocate for the non-applicant no.2.

CORAM : NIVEDITA P. MEHTA, J.

DATED : 27th NOVEMBER, 2025.

The present application is filed by the applicant under *Section 430 of the Bharatiya Nagarik Suraksha Sanhita, 2023* seeking suspension of sentence and grant of bail, pending final disposal of the criminal appeal.

2. The applicant has preferred an appeal challenging the judgment and order of conviction dated 25th March 2025, passed by the learned Extra Joint District Judge and Additional Sessions Judge (Special Judge, POCSO Court), Nagpur in *Special Case (Child)*

No. 1 of 2019. By the impugned judgment, the applicant has been convicted for the following offences:
Section 6, POCSO Act, 2012 – Sentenced to *20 years’ rigorous imprisonment* and fine of ₹10,000/-, in default R.I. for one year.

Section 377, IPC – Sentenced to *5 years’ rigorous imprisonment* and fine of ₹5,000/-, in default R.I. for six months.

Section 506-II, IPC – Sentenced to *1 year’s rigorous imprisonment* and fine of ₹1,000/-, in default R.I. for one month.

3. Learned counsel for the applicant submits that the applicant has been falsely implicated in the present case. He draws the Court’s attention to the depositions of the informant (mother of the victim) and the victim, highlighting material contradictions and omissions concerning the alleged incident. It is pointed out that while the informant stated that the Diwali vacation was ongoing at the relevant time, the victim deposed that he had attended school on the date of the incident. According to counsel, the narration of the incident also varies substantially between the two testimonies. Reliance is also placed on the evidence of P.W.6, who had accompanied the victim on the

applicant's motorcycle, and who has categorically stated that he did not witness any such incident as alleged.

4. It is further submitted that the medical evidence of P.W.4 – Dr. Raut – does not support the prosecution case. The doctor noted no abnormality, no local injury, normal mucosa, and non-dilated, non-painful anus, and opined that full act of unnatural sexual intercourse by an adult male could not have possibly been done. The only injury found was an abrasion on the lateral aspect of the thigh. Learned counsel submits that the victim did not raise any alarm and that the applicant was on bail throughout the trial without misusing liberty. Reliance is placed on *Samiulla Karim Shaikh @ Marwadi Kaka v. State of Maharashtra, 2023 (1) ABR (Cri.) 476*.

5. The learned Additional Public Prosecutor opposes the application, submitting that the victim's testimony inspires confidence and clearly implicates the applicant in act of unnatural sexual. The victim's failure to raise alarm, it is submitted, was due to threats extended by the applicant. It is argued that P.W.6 did not witness the incident as he was dropped off by the applicant before the occurrence.

6. Learned counsel for the victim submits that the victim was a 10-year-old child, ignorant of the acts

he was forced to undergo. The abrasion on the thigh, she submits, supports the prosecution case. She contends that the judgment of conviction passed by the trial court is based on a detailed appreciation of evidence and cannot be termed perverse.

7. I have considered the rival submissions, the nature of the offence, and the sentence imposed. It is relevant to refer the judgment of Hon'ble Supreme Court in the case of *Jamnial Vs. State of Rajasthan and another passed in Criminal Appeal No.... Of 2025 (@ Special Leave Petition (Crl.) No. 69 of 2025)*, wherein the Hon'ble Supreme Court has observed in paragraph 10 reads thus:

10. One would have expected the High Court hearing an application under Section 389 of Cr.P.C. for suspension of sentence to examine whether prima facie there was anything palpable on the record to indicate if the accused had a fair chance of overturning the conviction. In Omprakash Sahni v. Jai Shankar Chaudhary and Another reported in 2023 (6) SCC 123, this Court had the following to say on the scope of Section 389 of the Cr.P.C.

"23. The principle underlying the theory of criminal jurisprudence in our country is that an accused is presumed to be innocent till he is held guilty by a court of competent jurisdiction. Once the accused is held guilty, the presumption of

innocence gets erased. In the same manner, if the accused is acquitted, then the presumption of innocence gets further fortified.

24. From perusal of Section 389 CrPC, it is evident that save and except the matter falling under the category of sub-section (3) neither any specific principle of law is laid down nor any criteria has been fixed for consideration of the prayer of the convict and further, having a judgment of conviction erasing the presumption leaning in favour of the accused regarding innocence till contrary recorded by the court of competent jurisdiction, and in the aforesaid background, there happens to be a fine distinction between the prayer for bail at the pre-conviction as well as the post-conviction stage viz. Sections 437, 438, 439 and 389(1) CrPC.

33. 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 abovesaid 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 takes 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 reappreciate the evidence at the stage of Section 389 CrPC and try to pick up a few lacunae or loopholes here or there in the case of the prosecution. Such would not be a correct approach."

8. *Prima facie*, the medical evidence of P.W.4 rules out the possibility of the alleged unnatural sexual act as described by the prosecution. There are also material variances in the depositions of the mother/informant and the victim. The victim was examined at Indira Gandhi Memorial (Mayo) Hospital on 02.11.2025 where only a thigh abrasion was noted. Considering the totality of circumstances, including the applicant having been on bail throughout the trial without any report of misuse of liberty, I am of the opinion that a case for suspension of sentence is made out.

The substantive sentence imposed upon the applicant by the learned Extra Joint District Judge and Additional Sessions Judge (Special Judge, POCSO Court),

Nagpur in Special Case (Child) Case No. 1 of 2019, is hereby suspended pending final disposal of the appeal.

The applicant shall be released on bail on the following conditions:

- i) The applicant shall execute a Personal Recognizance Bond in the sum of ₹25,000/- (Rupees Twenty Five Thousand only) with one solvent surety in the like amount, to the satisfaction of the Trial Court.
- ii) The applicant shall report before the Trial Court on the 1st Day of every calendar month until further orders.
- iii) The applicant shall furnish his current residential address and mobile number to the concerned Sessions Court and shall inform the Court of any change in address or contact details forthwith.
- iv) It is clarified that the learned Additional Public Prosecutor and/or the Investigating Officer shall be at liberty to move for cancellation of bail in the event of breach of any of the aforementioned conditions or for any other sufficient cause.

The criminal application stands disposed of accordingly.

[NIVEDITA P. MEHTA, J.]