



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

CRIMINAL APPLICATION (APPA) NO. 537 OF 2025
IN
CRIMINAL APPEAL NO. 301 OF 2025

Aashish s/o Suresh Narnaware Vs State of Maharashtra

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

Court's or Judge's Order

Mr. A.M. wasnik, counsel for applicant/appellant.

Mrs. Sneha Dhote, APP for respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 29/07/2025.

1. By this application, the appellant is seeking suspension of sentence and release of the appellant on bail.

2. Heard learned counsel for the appellant, who submitted that the appellant was prosecuted for the offence punishable under Sections 376, 324, and 506 of the Indian Penal Code and under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'the POCSO Act'). After appreciating the evidence, the appellant was acquitted of the offence punishable under Section 4 of the POCSO Act. However, he was convicted under Section 376 of the IPC and sentenced to suffer R.I. for ten years and fine of Rs. 5,000/-; for the offence punishable under Section 324, he was sentenced to suffer rigorous imprisonment for one year and fine of Rs. 2,000/-; and for the offence punishable under Section 506

of the IPC, he was sentenced to suffer R.I. for six months and fine of Rs. 1,000/-. He invited my attention towards the evidence of the victim and the cross-examination and submitted that this evidence sufficiently shows that there was a friendly relationship between the victim and the present appellant, and out of that friendly relationship, the physical relationship was developed between them.

3. Learned counsel for the appellant submitted that the punishment imposed is of a limited period. Learned counsel also pointed out from the impugned judgment that he has many arguable points in the present appeal, but the appeal would take its own time for its final disposal.

4. The learned APP strongly opposed for the same and submitted that considering the evidence of the victim, which is consistent with the medical evidence, the application for suspension of sentence deserves to be rejected.

5. On hearing both sides and on perusal of the record, it reveals that the evidence of the victim, who has during cross-examination admitted about her friendship. Thus, it is apparent from the evidence of the victim that there was a friendly relationship between them, and out of that friendly relationship, a physical relationship was developed between them. Admittedly, at this stage, the court is not required to reappraise the evidence, but what is to be seen is that whether the appellant is having any chance of success in the present appeal.

6. This aspect is also considered by the Hon'ble Apex Court in the case of ***Om Prakash Sahni Vs. Jai Shankar Chaudhary and Anr., reported in (2023)6 SCC 123***, wherein it is observed that, *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."*

7. In the case in hand, as pointed out by learned counsel for the appellant from the evidence of the victim,

which shows that the appellant has every chance of success in the present appeal. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass the following order.

- a] The criminal application is **allowed**.
- b] The execution of the sentence passed in Special Criminal (Child) Case No. 38/2023 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.
- e] The appellant shall also furnish his detailed address along with the address proof before the Extra Joint District Judge and Additional Sessions Judge, Nagpur

8. The criminal application is **disposed of**.

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1. Heard.

2. **Admit.**

3. Learned APP waives service of notice on behalf of respondent/State.

4. The criminal appeal be listed before this Court after preparation of the paper-book.

[URMILA JOSHI-PHALKE, J.]