



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

Criminal Application [APPA] No.757 of 2025

in

Criminal Appeal No.434 of 2025

Tejas Dilip Tirpude

vs.

State of Maharashtra, Through P.S.O., P.S. Wardha and another

*Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.*

Court's or Judge's Orders

Mr. Mahesh Rai, Advocate for the Applicant/Appellant.

Mr. S.S. Hulke, A.P.P. for Non-Applciant/Respondent No.1.

Ms. Alpana Ingolikar, Advocate for Non-Applciant/Respondent No.2.

CORAM : NIVEDITA P. MEHTA, J.

DATE : 23rd DECEMBER, 2025.

Heard.

2. The applicant has preferred the present appeal challenging the judgment and order dated 30.05.2025 passed by the learned Special Judge (POCSO Act), Wardha, in Special (Child) Case No.95 of 2019, whereby the applicant came to be convicted for the offences punishable under Sections 363, 366-A and 376(3) of the Indian Penal Code and Section 6 of the Protection of Children from Sexual Offences Act, 2012. The learned Trial Court sentenced the applicant to suffer rigorous imprisonment for twenty years and to pay a fine of Rs.2,000/-, in default, to suffer simple imprisonment for six months.

3. The present application has been filed by the applicant under Section 430 of the Bharatiya Nagarik Suraksha Sanhita, 2023, seeking suspension of sentence and grant of bail pending disposal of the appeal.

4. Learned Counsel appearing for the applicant submits that the applicant has been incarcerated for more than seven years and was not released on bail either during the course of the trial or thereafter. It is further contended that the learned Trial Court failed to properly appreciate the prosecution evidence in its correct perspective. Learned Counsel drew the attention of the Court to the deposition of the victim, wherein she stated that she had accompanied the applicant to different places for a period exceeding three months and that they resided at the house of one Jagdish. It is submitted that during the said period, the victim neither raised any alarm nor made any attempt to seek assistance from any person.

5. Learned Counsel further pointed out material omissions and contradictions in the testimony of the victim, as elicited during cross-examination. Reliance was also placed upon the evidence of the Medical Officer who examined the victim, wherein it was noted that the incident was stated to have occurred approximately two months prior to the medical examination. Though injury to the hymen was noticed, the medical opinion did not conclusively establish sexual assault. It is further submitted that the victim was allegedly sexually exploited by one Jagdish, at whose residence she stayed, and that the said Jagdish was subsequently killed by one Pawan. Learned Counsel submits that only after the victim was recovered by the police from Bhachau, Gujarat, did she allege sexual exploitation by the present applicant.

6. It is further contended that there are material inconsistencies in the depositions of other prosecution witnesses as well. On these grounds, learned Counsel submits that the applicant has an arguable case on merits with reasonable chances of success in the appeal. Considering the long incarceration already undergone and the fact that

the appeal is not likely to be heard in the near future, suspension of sentence is sought.

7. Per contra, learned Additional Public Prosecutor strongly opposed the application, submitting that the victim was kidnapped and repeatedly sexually exploited by the applicant. It is submitted that the co-accused Jagdish also sexually assaulted the victim at his residence in Bhachau, Gujarat, in the presence of the applicant, who did not raise any objection. The learned A.P.P. further submits that the deposition of the victim reveals that she was subjected to physical assault and cigarette burns by both the accused persons, which injuries were shown by the victim to the learned Trial Judge during her testimony and were duly noted in the judgment.

8. It is further emphasized that the victim was a minor, aged about 15 years and 10 months, at the time of the incident, and therefore, under the provisions of the POCSO Act, the issue of consent is wholly irrelevant. The learned A.P.P. submits that the learned Trial Court has correctly appreciated the evidence on record and rightly convicted the applicant. Hence, it is contended that no case for suspension of sentence is made out.

9. Learned Counsel appearing on behalf of non-applicant No.2–victim adopted the submissions advanced by the learned Additional Public Prosecutor.

10. Before advertng to the merits of the application, it is apposite to refer to the law laid down by the Hon'ble Supreme Court in *Jamnallal v. State of Rajasthan*, 2025 LiveLaw (SC) 779, in paragraph 10 has held as under :

“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, 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.”

11. Taking into consideration the principles laid down by the Hon’ble Supreme Court, the period of incarceration already undergone by the applicant, the nature of the evidence adduced before the Trial Court, and the fact that the appeal is not likely to be taken up for final hearing in the near future, this Court is of the considered view that the applicant has made out a case for suspension of sentence and grant of bail pending disposal of the appeal.

Hence, the following order is passed:

ORDER

- i. The application is allowed.
- ii. The substantive sentence imposed upon the applicant by the learned Special Judge (POCSO Act), Wardha in Special (Child) Case No.95/201922 is hereby suspended pending final disposal of the appeal.

- iii. The applicant shall be released on bail on his executing a P.R. bond in the sum of Rs.30,000/- (Rupees Thirty Thousand only) with one solvent surety in the like amount, to the satisfaction of the trial Court.
- iv. The applicant shall report before the trial Court on the first day of every calendar month until further orders.
- v. The applicant shall furnish his Mobile Number(s) as well as his current residential address to the concerned Sessions Court and shall inform the Court of any change in address or contact details forthwith.
- vi. It is clarified that the learned A.P.P. 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.
- vii. The application stands disposed of accordingly.

JUDGE

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