



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

Criminal Application (APPA) No. 969 of 2025
in
Criminal Appeal No. 572 of 2025

Sagar Devrao Tajnerkar

Versus

The State of Maharashtra through Police Station Officer, Police Station
Immamwada, 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 Harshwardhan Chawhan, Advocate for the applicant.

Shri S.S.Hulke, APP for the non-applicant/State.

CORAM : NIVEDITA P. MEHTA, J.

DATED : 10th DECEMBER, 2025.

1. 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 the final disposal of the criminal appeal.

2. The applicant has preferred an appeal challenging the judgment and order of conviction dated 9th October, 2025, passed by the learned Additional District & Sessions Judge-8, Nagpur in Sessions Case No. 766 of 2021. By the said judgment, the applicant

has been convicted for the offence punishable under Section 370 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of ₹10,000/-, and in default thereof, to suffer rigorous imprisonment for six months.

3. Learned counsel for the applicant submits that the applicant was on bail throughout the trial and has never misused the liberty so granted. It is further submitted that the applicant has fair and reasonable grounds to succeed in the appeal, which is not likely to be heard in the near future. It is also contended that the Investigating Officer lacked competence to carry out the investigation insofar as it pertains to the *Immoral Traffic (Prevention) Act, 1956*. It is further urged that the trial Court has not evaluated the prosecution evidence in its proper perspective and that certain material aspects emerging from the evidence have not received due consideration, thereby rendering the conviction vulnerable.

4. The learned Additional Public Prosecutor opposes the application and submits that the material on record prima facie reveals the active involvement of the applicant in facilitating the sexual exploitation of the victim by allowing the use of a rented flat for the purpose of prostitution. It is contended that the

applicant induced the victim by offering ₹1,000/- for engaging in sexual intercourse with a customer and that he financially benefited from the said illegal activity. According to the State, the offence is grave and serious, and the applicant is not entitled to the discretionary relief of suspension of sentence.

5. I have considered the rival submissions and the material placed on record.

6. Having regard to the nature of the accusations, the sentence imposed, and the grounds raised in the appeal, this Court finds that a case is made out for suspension of sentence. The applicant remained on bail during the entire period of the trial and there is nothing on record to indicate misuse of liberty. The appeal, filed in 2025, is not likely to be taken up for final hearing in the immediate future given the roster and pendency. Moreover, the grounds urged in the appeal, including the challenge to the competence of the Investigating Officer under the *Immoral Traffic (Prevention) Act, 1956*, and the contention that certain material inconsistencies and circumstances have not been adequately evaluated, raise arguable issues that warrant examination at the final hearing. Without entering into a re-appreciation of evidence, this Court is satisfied that the applicant has demonstrated the

existence of issues which may have a bearing on the ultimate outcome of the appeal. In such circumstances, prolonged incarceration during the pendency of the appeal would not be justified.

7. The Hon'ble Apex Court in *Jamnial v. State of Rajasthan* (Criminal Appeal No. ... of 2025 @ SLP (Crl.) No. 69 of 2025) has elucidated the scope of suspension of sentence under Section 389 of the Cr.P.C.

In paragraph 10, the Hon'ble Apex Court observed:

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, 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. The Hon'ble Apex Court has reiterated that, while considering an application under Section 389 Cr.P.C., the appellate Court is required to examine whether there is anything palpable or apparent on record that gives rise to a fair chance of the conviction being overturned. The Supreme Court has cautioned that although re-appreciation of evidence at this stage is impermissible, the Court must nevertheless consider whether any obvious infirmity in the approach of the trial Court or any apparent inconsistency in the prosecution case provides a prima facie basis to suspend the sentence pending appeal.

9. In view of the above observations and applying the principles laid down by the Hon'ble Apex Court in

Jamnallal (supra), the present application deserves to be allowed.

10. The substantive sentence imposed upon the applicant by the learned Additional Sessions Judge District Judge-8 and Additional Sessions Judge, Nagpur in Sessions Case No. 766 of 2021, 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 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.]