



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH AT NAGPUR

CRIMINAL APPLICATION (APPA) NO. 1146/2024

IN

CRIMINAL APPEAL NO. 678/2024

**Prakash s/o Lalsingh Chavahan Vs. State of Maharashtra, through P.S.O.,
P.S. Mangrulpir**

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. A.S. Londhe, Advocate for Applicant
Mr. S.S. Hulke, APP for Respondent

CORAM: NIVEDITA P. MEHTA, J.

DATED : 7th OCTOBER, 2025

1. The present application is preferred under Section 389 of the Code of Criminal Procedure, 1973, seeking suspension of sentence pending disposal of the appeal.

2. The applicant has been convicted by the learned trial Court for the following offences:

Section 506 of the Indian Penal Code (IPC):
Sentenced to rigorous imprisonment for one year and a fine of ₹500/-, in default, to undergo rigorous imprisonment for three months;

Section 376(2)(l)(n) of IPC: Sentenced to rigorous imprisonment for ten years and a fine of ₹5,000/-, in default, to undergo rigorous imprisonment for six months;

Sections 3, 4, 5(j)(2)(k)(l), and 6 of the Protection of Children from Sexual Offences Act, 2012: No separate sentence has been awarded under Sections 4 and 6 in view of Section 42 of the POCSO Act, as a greater punishment under Section 376(2)(l)(n) IPC has already been imposed.

3. Learned counsel for the applicant submits that the applicant has undergone approximately five years of the sentence. It is further submitted that the applicant was on bail during the trial and did not misuse the liberty granted to him. According to the applicant, the judgment of conviction suffers from material infirmities, and the prosecution has failed to establish that the victim was a minor at the time of the incident. It is also argued that the victim's testimony contains contradictions, and that no proper procedure was followed while collecting and handling the DNA sample, raising serious doubts about its admissibility and reliability. On these grounds, it is submitted that the applicant has a fair chance of succeeding in the appeal, and suspension of sentence may be granted.

4. Per contra, learned Additional Public Prosecutor strongly opposes the application and submits that the victim's testimony

is consistent and credible, and has not been shaken during cross-examination. The DNA report confirms that the applicant is the biological father of the male child born to the victim. Further, the date of birth of the victim, recorded as 01.09.2007, is duly established on record. The trial Court has rightly convicted the applicant on the basis of cogent and legally admissible evidence, and no case is made out for suspension of sentence.

5. I have heard the rival submissions and perused the record, including the judgment of the learned trial Court. The conviction is based on a detailed appreciation of evidence, including medical and scientific evidence, and cannot be said to suffer from any glaring infirmity or perversity requiring interference at this stage.

6. The Hon'ble Supreme Court, in *Jamnial v. State of Rajasthan & Anr.*, SLP (Crl.) No. 69/2025, has laid down the parameters for suspension of sentence under Section 389 CrPC.

In particular, paragraph 10 of the judgment reads as follows:

"...the endeavour on the part of the Court 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 fair chances of acquittal... What is to be looked into is something palpable — something which is very apparent or gross on the face of the record... The appellate court should not re-appreciate 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."

*"10. One would expected the High Court hearing an application under Section 389 of Cr.PC. for suspension of sentence to examine 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.PC.*

"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 mater 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.”

7. In view of the settled legal position and considering the gravity of the offences, the nature of evidence led, and the reasoning recorded by the trial Court, this Court does not find any prima facie ground or palpable infirmity in the judgment of conviction so as to hold that the applicant has fair chances of acquittal. Hence, no case is made out for suspension of sentence.

8. Accordingly, the application is rejected.

9. However, considering the fact that the applicant has already undergone approximately half of the sentence, the Registry is directed to expedite the preparation of the paper

book. Upon completion of the same, the criminal appeal shall be listed for final hearing at the earliest.

(NIVEDITA P. MEHTA, J.)

MP Deshpande