

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**NAGPUR BENCH AT NAGPUR****CRIMINAL APPLICATION (APPA) NO. 1166/2024****IN****CRIMINAL APPEAL NO. 689/2024****Anil s/o Lalu More Vs. State of Maharashtra, through Police Station Officer,
Patan, Tq. Zari**

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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Mrs. Vaishali Khadekar, Advocate for Applicant
Mr. A.R. Chutke, 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 and Section 430 of the Bharatiya Nagarik Suraksha Sanhita, 2023, seeking suspension of sentence and grant of bail during the pendency of the appeal.

2. The applicant stands convicted for the following offences:

Section 511 read with 376-AB of the Indian Penal Code (IPC) – sentenced to rigorous imprisonment for 10 years and fine of ₹5,000/-, in default to suffer R.I. for 3 months;

Section 511 read with 376(2)(j) of IPC – sentenced to rigorous imprisonment for 7 years and fine of ₹5,000/-, in default to suffer R.I. for 3 months;

Section 10 of the Protection of Children from Sexual Offences Act, 2012 – sentenced to rigorous imprisonment for 7 years and fine of ₹5,000/-, in default to suffer R.I. for 3 months.

3. Learned counsel for the applicant submits that the allegations pertain to the applicant allegedly removing the undergarment of the minor victim and committing sexual assault. It is submitted that there is no medical evidence corroborating the allegation of sexual assault. Further, it is submitted that the applicant remained in custody throughout the trial and has been wrongly convicted in the absence of substantive evidence directly implicating him in the offence.

4. Per contra, learned Additional Public Prosecutor opposes the application and submits that the absence of medical evidence is not determinative in offences of this nature. He further points out that the victim, a child of merely six years of age, promptly disclosed the incident to her parents, thus ruling out the possibility of tutoring or fabrication. It is submitted that the conviction is based on cogent and reliable evidence duly appreciated by the trial Court, and no case is made out for suspension of sentence.

5. I have considered the rival submissions and perused the material on record, including the judgment of conviction passed by the learned trial Court. The conviction is based on a detailed and reasoned appreciation of evidence. The sentence imposed is also not disproportionate.

6. The Hon'ble Supreme Court, in *Jamnial v. State of Rajasthan & Anr.*, SLP (Crl.) No. 69/2025, has delineated the principles governing the exercise of discretion under Section 389 CrPC. In particular, paragraph 10 of the judgment emphasizes the need for the appellate Court to form a prima facie view as to whether the conviction is sustainable. It has been held that:

*“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. Applying the above principles to the present case, this Court does not find any such *prima facie* ground or glaring irregularity which would indicate that the applicant stands fair chances of acquittal or that the conviction is *ex facie* unsustainable. The arguments raised relate to appreciation of evidence, which is a

matter to be examined at the stage of final hearing of the appeal.

8. In view of the above, this Court is not inclined to suspend the sentence or enlarge the applicant on bail.

9. The application for suspension of sentence and grant of bail stands rejected.

(NIVEDITA P. MEHTA, J.)

MP Deshpande