



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

CRIMINAL APPLICATION NO.172 OF 2025

IN

CRIMINAL APPEAL NO.98 OF 2025

(Shabbir Shaha Mehaboob Shaha 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. K.G. Rathi, Advocate for the applicant.
Mr. V.A. Thakare, APP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- FEBRUARY 28, 2025

By this application, the appellant is seeking suspension of sentence and releasing him on bail.

2. Learned Counsel for the appellant submitted that the appellant is prosecuted of the offence punishable under Sections 376(AB), 323, 506 of the IPC and under Section 4 and 6 of the Protection of Children from Sexual Offences Act, 2012.

3. After appreciation of the evidence, learned trial Court held the appellant guilty of the offence punishable under Sections 376(AB) and sentenced to suffer rigorous imprisonment for twenty years and to pay fine of Rs.25,000/- in default to suffer simple imprisonment for one year. No separate punishment is provided under Section 376(AB).

4. Learned Counsel for the appellant submitted that, as far as the medical evidence is concerned, to support the prosecution case that the victim is subjected

for the sexual assault is silent about the same. During cross-examination, the Medical Officer has admitted that there are many reasons for rupture of the hymen. The evidence of the victim is also not satisfactory and inspiring the confidence, there is a delay in lodging of the FIR. Thus, he submitted from the impugned judgment that he has many arguable points in the present appeal. The appeal would take its own time for its final disposal. In the meantime, if sentence is executed the purpose of preferring the appeal would frustrate. In view of that, he be released on bail and the execution of sentenced be suspended.

5. Learned APP strongly opposed the application and submitted that 10 years girl was subjected for the sexual assault by the present appellant who is 70 years of age. He invited my attention towards the medical evidence and submitted that the hymen was shown to be ruptured. The history narrated by the victim to the Medical Officer and the disclosure by the victim to her parents sufficiently shows the involvement of the present appellant in the alleged incident. He submitted that reappreciation of the evidence, at this stage, is not permissible. In view of that, the application deserves to be rejected.

6. I have heard learned Counsel for both the parties. Perused the evidence of the victim as well as the evidence of the Medical Officer from which it reveals that 10 years girl was subjected for the forceful sexual assault

by the appellant, hymen was found ruptured. The evidence of the victim is corroborated by the medical evidence as well as other circumstantial evidence. The hymen was found ruptured at a 6.00 O'clock position. Admittedly, at this stage, reappreciation of the evidence is not permissible. What is to be seen is that whether the appellant has succeeded in showing that he has many arguable points in the present appeal. From the impugned judgment though learned Counsel for the appellant has pointed out but which is not sufficient to show that the appellant has every chance of success in the present appeal. This aspect is also dealt by the Honourable Apex Court in the case of ***Omprakash Sahni Vs. Jai Shankar Chaudhary in Criminal Appeal No.1331-1332/2023 decided on 02/05/2023*** along with the connected appeals wherein by referring the earlier judgment on Section 389 the Honourable Apex Court held in para No.33 as under:

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 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 reappreciate the evidence at the stage of Section 389 of the CrPC 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 light of the above observation of the Hon'ble Apex Court, in the present case the appellant fails to point out that he has many arguable points and having every chance of success in the present appeal. In view of that, the application deserves to be rejected.

8. The application is rejected accordingly.

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Heard.

2. **ADMIT.**

3. Learned APP waives notice for the State.

4. Call for R. & P.

5. Place the appeal before the Court for final disposal after preparation of the paper book.

(URMILA JOSHI-PHALKE, J.)