



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

**CRIMINAL APPLICATION (APPA) NO.72/2025**

**IN**

**CRIMINAL APPEAL NO. 43/2025**

**Munnibai Maksud Pathan Vs. The State of Maharashtra, through  
P.S.O. Ajni Police Station, Nagpur**

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| 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. R.M. Daga, Advocate for Appellant  
Mr. S.S. Hulke, APP for Respondent No.1  
Mr. A.A. Krishnan, Adv. (Appointed) for Respondent no.2

**CORAM: NIVEDITA P. MEHTA, J.**

**DATED : 17<sup>th</sup> NOVEMBER, 2025**

1. The applicant has filed the present appeal before this Court, challenging the judgment and order dated 25.11.2024, passed in Special Criminal (POCSO) Case No. 492/2021, by the learned Extra Joint District Judge and Additional Sessions Judge [Special Judge, POCSO Court], Nagpur.

2. The applicant stands convicted for the following offences:

**Section 376(3)** of the Indian Penal Code (IPC): sentenced to undergo rigorous imprisonment for 20 years and to pay a fine of ₹7,000, in default to suffer further rigorous imprisonment for 1 year;

**Section 4** of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act): sentenced to undergo rigorous imprisonment for 20 years and to

pay a fine of ₹7,000, in default to suffer further rigorous imprisonment for 1 year;

**Section 3** of the Immoral Traffic (Prevention) Act, 1956 (the Act of 1956): sentenced to undergo rigorous imprisonment for 1 year and to pay a fine of ₹2,000, in default to suffer further rigorous imprisonment for 2 months;

**Section 4** of the Act of 1956: sentenced to undergo rigorous imprisonment for 1 year and to pay a fine of ₹2,000, in default to suffer further rigorous imprisonment for 2 months;

**Section 5** of the Act of 1956: sentenced to undergo rigorous imprisonment for 3 years and to pay a fine of ₹3,000, in default to suffer further rigorous imprisonment for 3 months; **Section 7** of the Act of 1956: sentenced to undergo rigorous imprisonment for 7 years and to pay a fine of ₹7,000, in default to suffer further rigorous imprisonment for 4 months.

3. The learned counsel for the applicant submits that the conviction recorded against the applicant for the offences punishable under Section 376(3) of the IPC and Section 4 of the Act of 1956 is unsustainable, as the said provisions are not attracted to the facts of the present case. He further contends that the remaining provisions invoked against the applicant prescribe comparatively lesser sentences. It is also urged that the learned Trial Court erred in invoking Section 7 of the Immoral trafficking Act of 1956, as

the statutory ingredients of the said provision have not been fulfilled. The counsel has drawn the attention of this Court to Section 7, which reads as under:

**“7. Prostitution in or in the vicinity of public places.—**[(1) Any 1 [person], who carries on prostitution and the person with whom such prostitution is carried on, in any premises,—

(a) which are within the area or areas, notified under sub-section (3), or

(b) which are within a distance of two hundred metres of any place of public religious worship, educational institution, hostel, hospital, nursing home or such other public place of any kind as may be notified in this behalf by the Commissioner of Police or magistrate in the manner prescribed, shall be punishable with imprisonment for a term which may extend to three months.]

[(1A) Where an offence committed under sub-section (1) is in respect of a child or minor, the person committing the offence shall be punishable with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.]

(2) Any person who—

(a) being the keeper of any public place knowingly permits prostitutes for purposes of

their trade to resort to or remain in such place; or

(b) being the tenant, lessee, occupier or person in charge of any premises referred to in subsection (1) knowingly permits the same or any part thereof to be used for prostitution; or

(c) being the owner, lessor or landlord, of any premises referred to in sub-section (1), or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof may be used for prostitution, or is wilfully a party to such use, shall be punishable on first conviction with imprisonment for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both, and in the event of a second or subsequent conviction with imprisonment for a term which may extend to six months and also with fine 2 [which may extend to two hundred rupees, and if the public place or premises happen to be a hotel, the licence for carrying on the business of such hotel under any law for the time being in force shall also be liable to be suspended for a period of not less than three months but which may extend to one year:

Provided that if an offence committed under this sub-section is in respect of a child or minor in a hotel, such licence shall also be liable to be cancelled.

Explanation.—For the purposes of this sub-section, “hotel” shall have the meaning an in clause (6) of section 2 of the Hotel-Receipts Tax Act, 1980 (54 of 1980).]

[(3) The State Government may, having regard to the kinds of persons frequenting any area or areas in the State, the nature and

the density of population therein and other relevant considerations, by notification in the Official Gazette, direct that prostitution shall not be carried on in such area or areas as may be specified in the notification.

(4) Where a notification is issued under sub-section (3) in respect of any area or areas, the State Government shall define the limits of such area or areas in the notification with reasonable certainty.

(5) No such notification shall be issued so as to have effect from a date earlier than the expiry of a period of ninety days after the date on which it is issued.]”

4. According to the learned counsel, the area in question is required to be notified under sub-section (3) of Section 7, and in the absence of any such statutory Notification, invocation of the said provision is prima facie unsustainable. He further submits that a perusal of the evidence of the victim (PW-2) demonstrates, at least prima facie, that the applicant did not compel the victim into prostitution. It is also submitted that the applicant was on bail throughout the trial and did not misuse the liberty granted to her. In these circumstances, the learned counsel prays for suspension of the sentence imposed upon the applicant.

5. Per contra, the learned Additional Government Pleader opposes the application and submits that the applicant was engaged

in running a brothel and has forced the victim girl into prostitution. He further points out that the applicant has one prior criminal antecedent involving similar allegations under Sections 3, 4 and 5 of the Act of 1956. He therefore contends that if the applicant is released, there exists a likelihood of her indulging in similar activities, and thus prays for rejection of the application for suspension of sentence.

6. Upon considering the rival submissions and examining the record, this Court finds that the testimony of the victim, prima facie, does not indicate that she was coerced into prostitution by the applicant. Having regard to the nature of the sentence imposed, the likelihood of the appeal being heard in the near future, and the law laid down by the Hon'ble Supreme Court in *Jamnala v. State of Rajasthan & Anr.*, SLP (Crl.) No. 69/2025, this Court deems it appropriate to reproduce the relevant principles governing suspension of sentence under Section 389 CrPC. Paragraph 10 of the judgment emphasizes that the appellate Court must form a prima facie view regarding the sustainability of the conviction. The Court has observed:

*“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 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.”*

7. With respect to the criminal antecedent, it is submitted that the said offence was registered in the year 2014 nearly a decade earlier and the trial therein is still pending. In the facts of the case, the pendency of such an old matter cannot, by itself, be a determinative factor for refusing suspension of sentence.

8. Considering the totality of the circumstances and applying the principles elucidated by the Hon’ble Supreme Court, this Court is of the considered view that the applicant has made out a case for suspension of sentence. Accordingly, the substantive sentence imposed by the learned Extra Joint District Judge & A.S.J. (Special Judge, POCSO Court), Nagpur, in Special Criminal (POCSO) Case No.

492/2021, vide judgment and order dated 25.11.2024, is hereby suspended, subject to the following terms and conditions:

I. The applicant/appellant shall be released on bail upon furnishing a personal bond of Rs. 25,000/- with one solvent surety in the like amount before the trial Court.

II. The applicant shall report before the concerned trial Court on the first Monday of every calendar month until further orders.

III. The applicant shall furnish her current residential address and mobile number to the concerned Sessions Court and shall inform the Court forthwith of any change in address or contact number.

The application stands disposed of accordingly.

**CRIMINAL APPEAL NO.43/2025**

Heard.

**ADMIT.**

Call R & P.

The learned Additional Public Prosecutor waives service of notice for respondent.

**(NIVEDITA P. MEHTA, J.)**