



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

CRIMINAL APPLICATION (APPA) NO. 459 OF 2025

IN

CRIMINAL APPEAL NO. 257 OF 2025

(Dhiraj S/o Santosh Zingare

Vs.

State of Maharashtra, Thr. PSO, PS Palandur, Tah. Lakhani, Distrit
Bhandara & Anr.)

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. T. Mirza, Advocate for the Applicant/Appellant.

Ms. Sneha Dhote, APP for the Non-Applicant-Respondent No.1/State.

Ms. Aastha Sharma, Advocate (Appointed) for the Non-applicant No.2/Victim.

CORAM: URMILA JOSHI-PHALKE, J.

DATED : 30th JUNE, 2025

1. By this Application, the Applicant/Appellant seeking suspension of sentence and releasing him on bail during the pendency of the Appeal.

2. The Appellant has challenged the judgment and order of conviction passed by the Special Judge, Bhandara dated 08.05.2025 convicting the present Appellant for the offence punishable under Section 363 of IPC and sentenced to suffer Rigorous Imprisonment for 3 years and to pay fine of Rs.5,000/-, in default to suffer Simple Imprisonment for three months. He is further convicted for the offence punishable under Section 376(2)(n) of IPC and sentenced to suffer Rigorous Imprisonment for 12 years and to pay fine of

Rs.20,000/-, in default to suffer Simple Imprisonment for one year. He is further convicted for the offence punishable under Section 4 and 5 (j)(ii)(1) punishable under Section 6 of the Protection of Children from Sexual Offences Act, 2012 and sentenced to suffer Rigorous Imprisonment for 12 years and to pay fine of Rs.20,000/-, in default to suffer Simple Imprisonment for one year.

3. Being aggrieved and dissatisfied with the same, the present Appeal is preferred by the present Appellant.

4. Heard Mr. Mirza, learned Counsel for the Appellant, who submitted that the evidence of the Victim shows that there was a love affair between her and the present Applicant. Out of love affair there was a physical relationship. She was on the verge of attaining the age of majority. Thus, it is not the case that out of lust she was subjected for the forceful sexual assault but there was a consensual relationship between both of them out of love affair. He submitted that, admittedly, the consent of the minor Victim is not relevant but while considering the Application for suspension of sentence, Court has to consider whether there are reasonable grounds or the Appellant has any chance of success in the present Appeal. At this stage re-appreciation of the evidence is also not permissible. In view of that, the Applicant be released on bail by suspending the sentence.

5. The learned APP for the Respondent No.1/State and learned Counsel for the Respondent No.2/Victim, strongly opposed for the same on the ground that the Victim

was below 18 years of age at the time of incident she was subjected for forceful sexual assault which resulted into her pregnancy. She delivered a male child. The DNA evidence is also there which proves the Appellant is the biological father. Considering all these aspects the learned Trial Court has rightly convicted the present Appellant. The Appeal is devoid of merits, and therefore, prayer for grant of bail and for suspension of sentence deserves to be rejected.

6. After hearing both the parties and on perusal of the evidence which is pointed out by the learned Counsel, it is to be seen whether the Appellant has made out the case for suspension for sentence. Admittedly, consideration for grant of bail under Section 483 of Cr.P.C. and considerations for grant suspension of sentence under Section 389 of Cr.P.C. new 430 of B.N.S. Act, 2023 are different. At the time of considering the bail Application under Section 483 of Cr.P.C. the considerations are the gravity of offence, whether the Appellant would be available for the trial and whether there is apprehension of the tampering of the witnesses, whereas at the stage of suspending the sentence the considerations are that whether the Appellant has any *prima facie* to show that he has any chances of success in the present appeal.

7. The guidelines issued by the Hon'ble Apex Court as far as the application of the suspension of sentence is concerned, in the case of ***Omprakash Sahni Vs. Jai Shankar Chaudhary & Anr., in Criminal Appeal Nos.1331-1332/2023*** and held 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.”

8. In view of the above observation of the Hon’ble Apex Court, at this stage the Court has to see whether the Appellant has any arguable points in the present Appeal which would result into his acquittal. On hearing the learned Counsel for the Appellant who has pointed out from the evidence of the Victim that there was a love affair between the Victim and the present Appellant. Thus, he succeeded in showing that there are many chances of success in the present Appeal and in that circumstances it would not be appropriate to keep him behind bars till disposal of the Appeal as the Appeal would take its own time for its final disposal. In view of that, the Application deserves to be allowed. Accordingly, I proceed to pass the following order:-

ORDER

- i. Criminal Application (APPA) No. 459/2025, is hereby **allowed**.
- ii. The execution of the sentence passed in Special Case (POCSO) No. 38/2018, is hereby suspended till the disposal of the Appeal.
- iii. The Applicant/Appellant-Dhiraj S/o Santosh Zingare, shall be released on bail on executing P.R. Bond in the sum of Rs.50,000/- (Rs. Fifty Thousand), with one solvent surety in the like amount.
- iv. The Appellant shall attend the Sessions Judge, Bhandara on 5th of every month, till the disposal of the Appeal and the learned Sessions Judge, Bhandara shall record his presence.

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1. Appeal is already admitted.
2. R & P is already received.
3. Appeal be listed before this Court after preparation of the Paper Book.

(URMILA JOSHI-PHALKE, J.)