



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

**CRIMINAL APPLICATION (APPA) NO. 815/2025**

**IN**

**CRIMINAL APPEAL NO. 404/2025**

**Nandkishor S/o Wamanrao Bhoyar Vs. State of Maharashtra, Through Police  
Station Officer, Police Station, Tah. Samudrapur, District Wardha**

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| Office Notes, Office Memoranda<br>of Coram, Appearances, Court's<br>orders or directions and<br>Registrar's orders | Court's or Judge's orders |
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Mr. B.B. Pantawane, Advocate for Applicant / appellant  
Ms. S.N. Thakur, APP for Respondent No.1  
Ms. Varsha A. Warade, Advocate (Appointed) for Respondent No.2

**CORAM:    NIVEDITA P. MEHTA, J.**

**DATED :    8<sup>th</sup> DECEMBER, 2025**

1.     This is an application filed by the applicant under Section 389 of the Code of Criminal Procedure for suspension of sentence. The applicant was convicted by the learned Special Judge (POCSO) (Court No.2), Hinganghat in Special (Child) Case No. 22/2018 vide judgment and order dated 28.03.2025.

2.     The applicant stands convicted for the following offences:

Section 376(AB), 354-A(1)(i), 354-A(1)(iii), 451, 506 of the Indian Penal Code (IPC) and Section 5 punishable under Section 6, Section 7 punishable under Section 8 and 11(i)(vi) punishable under Section 12 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

Section 5 punishable under Section 6 of the POCSO Act and sentenced to suffer rigorous imprisonment for 25 years and to pay fine of Rs.25,000/-, in default of payment of fine to suffer R.I. for 2 years;

Section 11(i)(vi) punishable under Section 12 of the POCSO Act and sentenced to suffer rigorous imprisonment for 1 year and to pay fine of Rs.5,000/-, in default of payment of fine to suffer R.I. for 2 months;

Section 451 of the IPC and sentenced to suffer rigorous imprisonment for 1 year and to pay fine of Rs.5,000/-, in default of payment of fine to suffer R.I. for 2 months;

Section 506 of the IPC and sentenced to suffer rigorous imprisonment for 1 year and to pay fine of Rs.5,000/-, in default of payment of fine to suffer R.I. for 2 months;

Section 7 punishable under Section 8 of the POCSO Act and sentenced to suffer rigorous imprisonment for 3 years and to pay fine of Rs.10,000/- and in default of payment of fine, to suffer rigorous imprisonment for 6 months.

3. The learned counsel for the applicant has filed the depositions of the prosecution witnesses along with the pursis. At the very outset, it is submitted that the applicant was on bail throughout the trial. The

learned counsel took the Court through the testimony of the victim and pointed out various contradictions and omissions in her narration of the incident. He further submits that PW-10, the Medical Officer who examined the victim, categorically stated that till the date of examination no complaint had been made by the victim; that on general examination no injuries were found on any part of the body; and that there was no hymenal injury, inflammation, or edema. Although during cross-examination the doctor stated that she had not given her final opinion as the FSL report was not available, her statement that “evidence of sexual intercourse cannot be ruled out” is not supported by the medical findings on record. The learned counsel further submits that though the victim claims to have narrated the incident to her “M”, the said witness was not examined by the prosecution. It is also highlighted that the alleged incident occurred more than 10–11 months prior to the filing of the report on 24.07.2018. In these circumstances, the learned counsel prays for suspension of sentence.

4. Per contra, the learned Additional Public Prosecutor submits that the victim was only 11 years old at the time of the incident. Although there is no medical evidence supporting the allegation of an attempted sexual assault, it is submitted that the child was shown obscene videos, which caused trauma, and that she was threatened by the applicant, preventing her from disclosing the incident to her parents. It is

further contended that there is no animosity between the families that would prompt a false implication. The learned APP, therefore, seeks rejection of the application. The learned counsel Ms. Warade appearing for the victim has adopted the arguments advanced by the learned APP.

5. Having considered the submissions advanced by the respective parties and upon perusal of the material on record, this Court notes that the applicant was on bail during the trial. The variance in the victim's evidence, which does not inspire confidence at this stage, also merits consideration. Further, reliance has been placed on the judgment of *Jamnial v. State of Rajasthan & Anr.*, SLP (Crl.) No. 69 of 2025, wherein the Hon'ble Supreme Court reiterated the principles laid down in *Omprakash Sahni v. Jai Shankar Chaudhary & Anr.* regarding the scope of Section 389 Cr.P.C. The Apex Court has observed:

*"10. One would expected the High Court hearing an application under Section 389 of Cr.P.C. 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.P.C.*

*"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.”*

6. Considering the above facts and the legal parameters laid down by the Hon'ble Supreme Court, this Court is of the opinion that a case for suspension of sentence is made out. Accordingly, the application is allowed. The substantive sentence imposed by the learned trial Court vide judgment and order dated 28.03.2025 passed by the learned Special Judge (POCSO), Court No. 2, Hinganghat, in Special (Child) Case No. 22/2018, is hereby suspended, subject to the following terms and condition.

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

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

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

The application shall stand disposed off.

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Heard.

**ADMIT.**

Issue notice to the respondent, returnable on  
06.01.2026.

The learned APP waives service of notice.

Call for R & P.

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

*MP Deshpande*