2026:BHC-AUG:46574

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 77 OF 2026
IN
CRIMINAL APPEAL NO. 138 OF 2026

Akash s/o Subhash Rathod
Age: 27 years, Occu.: Private Service,
R/o. Shivneri Society, H.No.05,
Bajajnagar, Aurangabad,
Permanent R/o. Sevanagar Taibhi,
Taluka and District Yavatmal … **Applicant**
[Accused]

Versus

1. The State of Maharashtra
Through Police Station,
M.I.D.C. Waluj,
Taluka and District Aurangabad.

2. X.Y.Z. … **Respondent**

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Mr. Sopan B. Bobade, Advocate for the Applicant.
Mr. N. D. Raje, APP for the Respondent No.1-State.
Ms. Ashwini A. Lomte, Advocate for Respondent No.2 (Appointed Through Legal Aid).

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 05.10.2026
PRONOUNCED ON : 06.10.2026

ORDER :

1. Instant application is for suspension of sentence awarded in Special Case (POCSO) No.397 of 2021 dated 18.03.2024 for offence under Section 377 of the Indian Penal Code [IPC] and under Section

4(2), 8 of the Protection of Children from Sexual Offences Act [POCSO Act] and equally, prayer is raised for grant of bail also.

2. Learned counsel for the applicant would submit that there is false implication. Except the child witness, who is tutored, there is no other evidence. Moreover, the prosecution had not conducted a Test Identification Parade for establishing the identity of the accused. The scientific evidence also does not support the prosecution. Such crucial aspects have not been considered and properly appreciated by the learned Trial Court. Hence, the present appeal has been preferred. The applicant has been in jail since 05.11.2021, and as the appeal is of the year 2026, it may not be heard immediately. Therefore, he prays for suspension of sentence and grant of bail.

3. Learned APP for respondent No.1 as well as learned Counsel for respondent No.2/victim have strongly opposed the application and relief by pointing out that serious offence is proved to be committed. That, testimony of victim finds support from medical evidence. That, DNA report also confirms involvement of accused.

4. Perused the papers. Applicant seems to be tried vide Special Case (POSCO) No.397 of 2021 for offence under Section 377 of IPC and under Sections 4(2) and 8 of POCSO Act. Case of prosecution in

Trial Court is based on eight witnesses. Crucial evidence is of PW1 victim boy, PW2 mother of the victim and PW5 medical officer.

5. **PW1** Victim, in his evidence at Exhibit-19, gave his age as seven years. In his examination-in-chief, he has stated that accused resides in his neighbourhood. He had called victim and asked him to remove his half pant and after making him sleep, accused inserted his penis in his anus. Accused offered him coin of Rs.10/-. He further deposed that he went home and reported his mother. **PW2** the mother of the victim also deposed that, in the evening, when she returned home, she noticed that her son was wearing Grey pant instead of black pant, which he had worn earlier. She questioned him about the same, and he allegedly told her that the black pant had become wet. When she insisted to show her the pant to verify whether he had urinated on it, she noticed white spots and a smell emanating from the pant. She therefore became doubtful and made further inquiries and he narrated that uncle residing in the neighbourhood called him, made him sleep, removed his pant and committed the above act and that thereafter accused has wiped his own male organ with the pant of the victim. She reported the incident to her sister-in-law and then police was approached.

6. **PW5** Medical officer opined that possibility of sexual assault cannot be ruled out. **PW8** chemical analyzer claims that DNA profile obtained from semen stains cutting from full pant of victim and controlled DNA profile obtained from the blood samples of accused are identical and of the same male origin. Thus, *prima facie,* there seems to be positive scientific evidence.

7. Considering the above material, this Court is not inclined to suspend the sentence and grant bail, **however, if the applicant so desires, his appeal itself can be taken up for final disposal.** Hence, I proceed to pass the following order:

ORDER

. Criminal Application is rejected.

[ABHAY S. WAGHWASE, J.]

scm