[Note : This order is corrected in view of speaking to the minutes of order dated 04.11.2026.]

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

**CRIMINAL APPLICATION NO. 2674 OF 2026**
**IN**
**CRIMINAL APPEAL NO. 537 OF 2026**

Sachin Madhukar Kasbe
Age: 36 years, Occu.: Labour,
R/o. Jai Nagar, Latur, Dist. Latur ... **Applicant**
[Accused]

**Versus**

1. The State of Maharashtra
Through Police Station Officer,
Udgir City Police Station,
District Latur.

2. XYZ ... **Respondent**

.....

Mr. Sachin S. Randive, Advocate for the Applicant.
Mr. V. S. Badakh, APP for the Respondent No.1-State.
Mr. Hashmi Ubaid S., Advocate for respondent No.2 (Appointed)

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**CORAM : ABHAY S. WAGHWASE, J.**

**RESERVED ON : 30.10.2026**
**PRONOUNCED ON : 31.10.2026**

**ORDER :**

1. The present application seeks suspension of sentence awarded to the applicant in Special Case (POCSO) No.05 of 2017 by the learned Additional Sessions and Special Judge, Udgir, vide judgment and order dated 28.04.2026, thereby convicting the applicant of the offence punishable under Section 376(1), 506 of the Indian Penal

Code. The applicant has also prayed for his release on bail.

2. Learned Counsel for the applicant submitted that applicant has been tried vide above Special Case (POCSO) No.05 of 2017 and he came to be convicted under Section 376 (1) of IPC and sentenced to suffer imprisonment for 10 years and under Section 506 of IPC, he is sentenced to suffer imprisonment for six months and fine. That, prosecution case is based on evidence of in all ten witnesses. However, according to learned Counsel for the applicant, there are several variances and contradictions in the testimonies of the mother as well as the victim on various aspects, including the place from where the victim was brought, the timing of the incident and who brought the victim to Udgir. That, there is also variance on the point of, who gave FIR. Moreover, there is delay of 2-3 in setting law into motion. That, implication is in the backdrop of previous quarrel. That, there is no medical support and, therefore, applicant has good case on merits, however, as appeal may not be heard earlier, he prays for relief of suspension of sentence and grant of bail.

3. Learned APP as well as learned Counsel for respondent No.2/victim both opposed the application on the ground that serious offence is proved to be committed. That, wife of applicant had taken victim for stay in the house and in the night time, accused committed

rape on victim. That, scientific evidence as well as medical evidence are positive. Learned APP and learned Counsel for respondent No.2/victim attribute variance to illiteracy, the victim's minor age, and lapse of time since the occurrence.

4. After considering the above submissions and on going through the record, it appears that case of prosecution is based on evidence of in all ten witnesses.

5. **PW2** Victim's evidence is at Exhibit-68. In her examination-in-chief itself, she seems to have stated that she does not remember the date of incident. According to her, while she was in the house of mother, Pallavi came to her house in the pretext of going to market, but instead she took her to Latur to her house consisting of two rooms. According to her, Pallavi and her husband accused slept in one room, while her children and herself slept in another room. Around 12.00 midnight, accused came to the room where she slept and raped her. When she tried to raise hue and cry, he threatened to kill her. She further states that she woke up in the morning, had tea and there sister of accused had come, who brought her to Udgir and, thereafter, she accompanied her mother to the police station. She admitted in cross-examination that she travelled in a crowded bus to Latur and that she did not inform passengers, conductor or police. She is also

unable to state details of the house where she was put up at Latur, where the incident took place. She is unable to remember the date on which she went there. In cross-examination, she answers that at the time of incident Pallavi was sleeping in another room. She admitted that she did not raise hue and cry, as he threatened to kill her. She answered that when she returned back to Udgir, she narrated the incident to her father and it is the father, who went to Police Station for filing the case. She is unable to remember when police recorded her statement.

6. **PW1** seems to be the mother of victim and it has come in her evidence at Exhibit-63 that her daughter went to reside at her uncle's place for 4 to 5 days and that wife of accused, namely, Pallavi went to the house of her brother-in-law and took her daughter to Latur, gave her lunch and dinner. That, accused husband in the midnight at 12.00 hours, after molesting her, asked her to remove her clothes and when she refused both Sachin and Pallavi threatened her of beating and thereafter, accused raped her. She further states that Pallavi took her daughter from house of brother-in-law at 1.00 p.m. and thereafter, she learnt from brother-in-law that victim was taken by Pallavi under the pretext for going to market and as she did not return, she was searched. On the next day, wife of Kanhaiyya namely,

Soni, brought her daughter to the house and on inquiry, she learnt about the incident from her.

7. **PW4** Medical Officer claims to have found rupture to hymen, but in cross-examination, she admitted that there were no injuries to the private part of the victim and that rupture to hymen is possible due to cycling.

7. **PW10,** who is examined on the point of age, placed on record school admission extract indicating date of birth of victim as 20.07.2000, but his examination-in-chief shows that admission was taken by the victim in the said school in 5$^{th}$ standard and earlier *bona fide* certificate was issued by the school.

8. Thus, here, *prima facie* it appears that though victim is 17 years of age, she claims to be taken by wife of accused from the house of her uncle on the pretext of going for market, but instead directly took her to bus stand and from there to Latur. Victim deposed that she told Pallavi that her mother would be frightened, but still she forcibly made her in the bus. She has admitted in cross-examination regarding not raising hue and cry. She seems to have spent a night and surprisingly, even after alleged rape at midnight, she does not seem to leave, but instead she seems to have taken tea and only when

wife of one Kanhaiya, namely, Soni came, she went to the house of her uncle and was later brought to the mother. As pointed out, occurrence of 01.07.2017 is reported on 03.07.2017 and as such, there is delay in lodging the FIR. There seem to be variances in the statements of mother and victim. According to victim, accused No.2 Pallavi came to her mother's house and asked her to come with her to market, but contrary to it mother PW1 states that her victim daughter went to reside with her uncle i.e. brother-in-law of PW1 at Udgir. Therefore, indeed, witnesses are not consistent, from where victim travelled to Latur. Therefore, there seem to be grounds to be dealt in appeal, but as appeal may not be heard in immediate near future, relief as prayed deserves to be granted. Hence, I proceed to pass the following order:

**ORDER**

I. Criminal Application stands allowed.

II. The substantive sentence imposed on the applicant - **Sachin Madhukar Kasbe** in Special Case (POCSO) No.05 of 2017 by the learned Additional Sessions and Special Judge, Udgir, vide judgment and order dated 28.04.2026, stands suspended till the final hearing and disposal of Criminal Appeal No. 537 of 2026.

III. The applicant be released on P.R. Bond of Rs.15,000/- (Rupees Fifteen Thousand Only) with two solvent sureties in the like amount.

IV. The applicant shall not commit any criminal activity.

V. The applicant shall remain present before the learned trial Judge once in six months, till final hearing and disposal of the appeal, commencing from the date he tenders bail papers and thereafter, the trial Judge to fix dates for his subsequent appearances.

VI. In case of two consecutive defaults on the part of the applicant to remain present before the trial court, the trial court to inform this court about the same and in that eventuality, the prosecution would be at liberty to file an application for cancellation of bail granted to the applicant.

VII. Bail before the trial court.

VIII. Fees of learned Advocate, who is appointed to represent the cause of respondent No.2, is to be paid by High Court Legal Services Sub Committee, Aurangabad, as per rules.

[ABHAY S. WAGHWASE, J.]

scm