2026:BHC-AUG:51951

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4011 OF 2026
IN
CRIMINAL APPEAL NO. 810 OF 2026

Kirtibhai Sulemanbhai Wankar,
Age: 52 years, Occu.: Labour,
R/o.883, Indiranagar, Alindra,
Tq. Nadiyad, Dist. Kheda (Gujarat) … Applicant

Versus

The State of Maharashtra,
Through,
Visarwadi Police Station Nandurbar
District Nandurbar … Respondent

…

WITH
CRIMINAL APPLICATION NO.3973 OF 2026
IN
CRIMINAL APPEAL NO.798 OF 2026

Parth Ajaykumar Bhatiya,
Age: 25 years, Occu.: Labour,
R/o. American Colony,
Mota Mahadev Road,
Nadiyad, District Kheda,
(Gujarat) ... Applicant

Versus

The State of Maharashtra
Through Police Inspector,
Visarwadi Police Station,
Taluka Nawapur,
District Nandurbar … Respondent

.....

Mr. Ajinkya Reddy, Advocate for the Applicant in Criminal Application No.4011 of 2026

Ms. Karishma S. Sarin, Advocate for the Applicant in Criminal Application No.3973 of 2026.

Mr. V. S. Badakh, APP for the Respondent/State.

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 26.10.2026
PRONOUNCED ON : 27.10.2026

ORDER :

1. Present applications seek suspension of sentence awarded to the applicants in Sessions Case No.62 of 2025 by the learned Additional Sessions Judge, Nandurbar vide judgment and order dated 02.09.2026, thereby convicting the applicants for the offence punishable under Section 143 read with Section 3(5) of the Bharatiya Nyaya Sanhita, 2023 [BNS]. The applicants have also prayed for their release on bail.

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2. Learned Counsel for the applicant would submit that prosecution has projected present applicant to be the husband of the victim. That, applicant was arrested on 17.06.2025 and he was also beneficiary of bail during trial. That, he has no criminal antecedents. Learned Counsel for the applicant pointed out that mere allegations are that he was found in the company of victim during visit of police.

She would further submit that, in fact, victim was major and she had left her own house on her own accord. Learned Counsel for the applicant pointed out that there is no evidence about human trafficking. Major allegations like threat, inducement and attempt to change identity are attributed to remaining accused i.e. accused Nos.2 to 5. Learned Counsel for the applicant pointed out that there is no call record, message or meeting to connect applicant with other accused and as such, she would submit that common intention does not automatically get drawn. Learned Counsel for the applicant further submitted that there are allegations of sale and purchase of victim for Rs.4,00,000/-, but said transaction is not proved. That, victim has admitted that she did not inform police that present applicant paid Rs.4,00,000/- to accused No.4 Bharti and even Investigating Officer has confirmed to that extent. Moreover, recovery of amount is from accused No.4. She would submit that there is no evidence about money trail going towards accused applicant or going through him. Moreover, testimonies of witnesses are full of material omissions and contradictions and improvement.

3. She would further submit that there are allegations of change of identity by use of notarized document, but investigation machinery did not seized his Aadhar card and no distinct investigation is carried

out in that regard. That, even notary admitted that victim's signature appearing on the register is distinct and different from the signature which was caused before the Court of learned Magistrate. Even Investigating Officer has not gathered sample of the signature, nor he had sent it for verification. That, even witnesses to the notarized document have not been examined and, therefore, there are several shortfalls and weakness in the story of prosecution.

4. Learned Counsel for the applicant further pointed out that the Investigating Officer has not seized mobile of the victim to ascertain human trafficking. No panchanama of house of applicant was recorded, nor there is statement of any immediate neighbour. She would further submitted that surprisingly, victim has stayed as many as six days in the company and house of applicant, however, her statement before Magistrate is about stay for only four days. Therefore, her evidence is not credible and victim is changing her version. Moreover, victim was possessing mobile, but surprisingly it was not used to reach family members or police. Thus, according to learned Counsel for the applicant mere finding victim in the house of applicant is not an incriminating material, more particularly, when she was major. Lastly, it is submitted that applicant is behind bars since almost 8 months. The appeal has been preferred, but it being of

2026, it may not be heard earlier and so she urges for relief of suspension of sentence and grant of bail.

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5. Learned Counsel for the applicant pointed out that present applicant is arraigned as accused No.5. That, he is behind bars since long. It is pointed out that only role attributed to the applicant is that he was present at the time of notarization of the document. He pointed out that the notary himself did not identify applicant. That, further no Test Identification parade was conducted to fix identity of the accused.

6. He also pointed out that, victim attained majority and was rather keen in performing marriage and this has come in the very testimony of her mother. He pointed out that, victim has left the house on her own accord of her own volition and will. That, she had also informed her intentions of performance of marriage to her friend Kajal and, therefore, victim herself eloping from the house in above regard cannot be ruled out.

7. Learned Counsel for the applicant also pointed out that apart from having attained majority, victim was also carrying her mobile

right from the time when she left the house. Learned Counsel for the applicant submit that surprisingly victim has neither raised any alarm, nor made any complaint to her near and dear ones and thus, according to learned Counsel for the applicant, very conduct of the victim is unnatural, rendering her story as well as story of prosecution doubtful.

8. He would further submit that, here, there is clear admission by the victim in cross-examination that she has deposed as instructed by police and, therefore, it being a tutored testimony, cannot be allowed to sustain. That, even PW4 notary has not marked presence of the applicant in his office. Learned Counsel for the applicant also expressed surprise as to how the victim, who was a student of a nursing course, could fail to apprise the Notary of the illegality allegedly committed by the accused persons. That, her mysterious silence speaks volumes about the episode and the evidence gathered by the prosecution regarding the notarized marriage. He would further submit that learned trial Court has erred in attracting Section 143 of BNS. Learned Counsel for the applicant pointed out that there is no recovery at the instance of applicant. All such points are to be dealt in appeal. That, applicant was on bail during trial. Now, there are no prospects of hearing the appeal in near future and for all above

reasons, he too prays for suspension of sentence and grant of bail, during pendency of appeal.

9. Section 389 of Cr.P.C. permits suspension of sentence after conviction and even permits setting convict at liberty. However, it is fairly settled that such powers are to be exercised only in exceptional cases and in rare circumstances when it is palpably shown that there are fair chances of success in appeal and when appellate court is satisfied about existence of apparent and gross error on the face of record. Obviously, at this stage, there cannot be meticulous re-appreciation of the evidence but only on *prima facie* consideration and satisfaction, if the court feels that conviction may not be sustained while rejudging the case, only in such exceptional cases, sentence has to be suspended and bail can be granted to the prisoner till decision of the appeal by the appellate court. As to what are the exceptional cases and rare cases has not been defined or categorized but going by the precedents, certain factors like gravity of offence, nature of crime, circumstances in which offence has taken place are a few considerations which are expected to be borne in mind while exercising powers under Section 389 of Cr.P.C. There are catena of judgments on above point and a few could be named as ***Rama Narang v. Ramesh Narang and others*** (1995) 2 SCC 513 ; ***Rajesh Rajan Yadav***

alias Pappu Yadav v. CBI (2007) 1 SCC 70 and ***Sidhartha Vashisht alias Manu Sharma v. State (NCT of Delhi)*** (2008) 5 SCC 230 wherein scope, object and purport of Section 389 of Cr.P.C. has been distinctly and lucidly discussed.

10. Very recently, the Hon'ble Apex Court in the case of ***Omprakash Sahni v. Jai Shankar Chaudhary and another*** (2023) LiveLaw SC 389 has elaborately dealt with the precedent on above provision.

11. Heard. Perused the papers. It appears that both applicants, who are arraigned as accused No.1 and accused No.5, faced trial in Sessions Case No.62 of 2025 vide judgment and order dated 02.09.2026. Both seem to be convicted for offence under Section 143 read with Section 3(5) of the BNS and they are directed to suffer imprisonment for seven years and to pay fine. After preferring appeal against the said judgment, both applicants during its pendency had pressed into service present applications for relief of suspension of sentence and grant of bail i.e. by invoking Section 389(2) of Cr.P.C.

12. In brief, here, case of prosecution in trial Court was that, victim girl aged 19 years was induced by accused No.2 Rohit on the pretext of arranging job for her in a company at Vyara, Gujarat and believing

him, she accompanied him to Vyara on 10.06.2025. It is a further case of prosecution that this accused No.2 Rohit introduced victim to accused No.3 Neha as his sister-in-law and further informed that she would assist in securing the job and he left her in the company of accused No.3 at village Pati, where she was further introduced to accused No.4 Bharti and this accused No.4 according to prosecution took the victim to Aahwa-Dang on the pretext of showing her the place of employment. However, instead she was introduced to two persons and on the query of victim, accused No.4 Bharti asked her to remain silent and then informed her that she had already purchased her and that she would be required to marry according to her wishes or else to face with dire consequences. Here, mobile was also said to be taken away subsequently from her. It seems to be further case of prosecution that this accused No.4 took the victim back to Aahwa and there, she was taken to an office where she was instructed to disclose her name as Radhika and to pose accused No.4 as her mother or else she would face dire consequences. In the said office, it is alleged that victim's Aadhar particulars were used for creating a different identity and then she was taken to the office of Notary, where it is alleged that accused No.1 i.e. applicant in Criminal Application No.3973 of 2026 as well as accused No.5 i.e. applicant in Criminal Application No.4011 of 2026 manufactured marriage documents by projecting victim as

Radhika and she was made to sign documents and after preparation of documents, it is alleged that accused Nos.1 to 5 took the victim to Nadiad, Gujarat, where she was taken to the house of accused No.1. There, she learned that she had been purchased and sold to Kirtibhai for Rs.4,00,000/- for bringing her for marriage. Meanwhile, on report of mother of victim, Crime No.186 of 2025 came to be registered and police recovered the victim from the house of accused No.1 and investigation revealed that accused persons had committed the offence under Sections 137(2), 143 red with Section 3(5) of the BNS. After charge-sheeting and trying accused persons, learned trial Court was pleased to accept the case of prosecution as proved and after holding accused persons guilty, they were sentenced to suffer imprisonment for seven years.

13. Learned Counsel for both the applicants have taken this Court through the evidence of prosecution witnesses. Record shows that after victim left the house on 10.06.2025, on 11.06.2025 missing report was lodged resulting into Zero Crime at Nandurbar Police Station and further it was transferred to Visarwadi Police Station where above crime seems to have been registered. Prosecution seems to have rested its case on evidence of as many as seven witnesses.

14. **PW2** seems to be the victim and her evidence is at Exhibit-43, from where it is emerging that after leaving the house, she went to accused No.2 Rohit, who had offered her job at Vyara company and on that pretext, he took her to such place and then introduced her to accused No.3, who was projected to be the sister-in-law of accused No.2. Accused No.3 further took the victim to the house of accused No.4 at Pati on the pretext that accused No.4 was the one who had arranged the job. Accused No.4 then took the victim to Aahwa, where she was shown to two young men and thereafter victim was told that she was bought and threatened to project her name as Radhika. Accused No.4 allegedly threatened her to kill and throw her in the jungle and thereafter, she was taken for manufacturing fake Aadhar card and on its strength, she was taken to the office of notary, where fake marriage document was notarized under threat and thereafter, accused No.5 along with accused No.1 brought her initially to the house of accused No.1 at Nadiad and accused No.5 left, after which again the victim was kept in the house of accused No.1 for six days. There she disclosed to the family members of accused No.1 that she was not Radhika and that she had been bought for Rs.4,00,000/- and Parth had paid Rs.4,00,000/- to Bharti, who further sold her to Kirtibhai i.e. accused No.5.

15. Next crucial witness seems to be **PW3** Kajal, to whom victim allegedly met after leaving the house on 10.06.2025 and according to this witness, who has deposed at Exhibit-58, on 10.06.2025 victim told her that this witness, victim and accused No.2 would visit Molgi. They spent night at Nandurbar and on 11.06.2025, victim and accused No.2 travelled to Molgi on a motorcycle and from there they boarded a train to go to Chinchpada. According to this witness, victim had told her that she was going to Vyara for job with Rohit and she duly reported victim's mother on 15.06.2025 and she seems to have identified accused No.2.

16. **PW1** seems to be the mother of victim, who has set law into motion at Exhibit-23 and she has stated that her daughter left the house on the pretext of going college and on next day, telephoned her sister and informed that she was staying with her friend. When she learnt from Kajal that victim was seen at Khandbara Railway Station at 5.30 p.m with unknown person and that she had left for marriage, mother gave report to that extent.

17. Evidence of **PW7** Investigating Officer shows that after registration of crime, when he visited Nadiad, victim was found in the house of accused No.1 and at his instance, notarized marriage

document was seized along with other seizure.

18. Thus, what is *prima facie* emerging is that though victim left the house on the pretext of performing marriage, this 19 year old girl seems to have been assured a job and accordingly, she had accompanied accused No.2 Rohit and after accused Nos.3, 4 and 5 came in picture, the victim was brought to the house of accused No.1. There she had stayed for six days. Victim has deposed that she has learnt that she was bought for Rs.4,00,000/-. As regards to present applicants are concerned, it is emerging that the girl was taken from the custody of applicant accused No.1's house and as regards to accused No.5 is concerned, he was present at the time of notarization of the document and he seems to be an inter-mediatory, who along with accused No.1, took the victim to Nadiad. Resultantly, there is evidence showing that victim was bought for exploiting her and treating her as an object in the backdrop of money transaction. Investigating machinery seems to have gathered or recovered Rs.1,00,000/-. Thus, *prima facie* prosecution seems to have established the charges on the strength of above prosecution witnesses. Victim's evidence is crucial and she has named all accused persons including both the applicants i.e. applicant Rohit and applicant Kirtibhai. There seems to be a blend of human trafficking.

Resultantly, this Court is not inclined to grant relief as prayed. Hence, I proceed to pass the following order:

ORDER

. Criminal Applications are dismissed.

[ABHAY S. WAGHWASE, J.]

scm