IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4004 OF 2026
IN CRIMINAL APPEAL NO. 235 OF 2026

Suraj Sardarsingh Chavhan
Age – 35 years, Occupation – Labour,
R/o. Daregaon, Taluka and District Jalna. … Applicant

Versus

1. State of Maharashtra
Through Officer Incharge,
Police Station Kadin Jalna, District Jalna.

2. X Y Z – Victim … Respondents

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Sudarshan J. Salunke, Advocate for the Applicant.
Mr. G. O. Wattamwar, APP for Respondent No.1-State.
Mr. Sarita Maru Tekale, Advocate for Respondent No.2 (appointed)

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CORAM : ABHAY S. WAGHWASE, J.
Reserved on : 01.10.2026
Pronounced on : 05.10.2026

ORDER :

1. Present application is for suspension of substantive sentence and granted of bail as a result of judgment and order of conviction rendered by learned Additional sessions Judge, Jalna dated 12.03.2026 in Session Case No. 28 of 2015 holding applicant guilty for offence under Section 376 of IPC.

2. Learned counsel for the applicant submitted that there is false implication. That, at the threshold, prosecution miserably failed to

prove minority of the victim. According to him, there is no conclusive proof on the point of age of victim. On this count, he took this Court through the evidence of victim PW3 and Headmaster PW8 and would submit that, the school authority has placed on record school extract while the victim was in 6th standard. According to him, there is no birth certificate and father has not given date of birth of his daughter. Therefore, there is weak evidence on the point of age. Moreover, according to him, relations were consensual and prosecution evidence itself suggests so. That, applicant was on bail during trial. He has not misused liberty and sentence being a fixed term sentence, he prays for suspension of the same and for grant of bail.

3. Learned APP as well as learned counsel for victim, both oppose on the ground that prosecution has proved by adducing cogent evidence that victim was minor. They both pointed out that PW8 Headmaster has verified about entries taken in the school record on the basis of Transfer Certificate (TC) received from primary school of the victim. Therefore, there is legally acceptable evidence on the point of age. According to them, victim being minor, even if there are relations and long acquaintance, her consent is immaterial. They both justify the judgment and order of conviction to be on full fledged trial and oppose the relief.

4. Heard. Appeal has been preferred against the judgment and order of conviction and in such appeal, present application for suspension of sentence and grant of bail is pressed into service. Case of prosecution in trial court seems to be rested on the evidence of nine witnesses.

5. Here, ground is raised that prosecution has failed to substantiate minority of the victim. As pointed out, PW2 father is found to be conspicuously silent on the date of birth of his daughter. While recording evidence of victim, learned trial court has noted date of birth given by victim as 05.08.1998, but birth certificate is not placed on record and father of victim has admitted to that extent in cross para 2 about not giving any document relating to date of birth of victim.

6. PW8 Headmaster, in his evidence at Exhibit 85, deposed that victim took admission in 6th standard on 01.07.2009. According to him, her date of birth is 05.08.1998. He further deposed that such date is noted in the school record on the basis of TC received from earlier school, namely primary school. While under cross, he admitted that he did not carry original documents tendered at the time of admission of victim and he also admitted that on 01.07.2009 i.e. at

the time of admission of victim, only document taken was TC. The Hon'ble Apex Court in the recent case of ***P. Yuvaprakash v. State Represented by Inspector of Police*** [2023 INSC 676] has categorically held that Transfer Certificate is not a proof of date of birth of a victim in a case under the POCSO Act.

7. Resultantly, as pointed out, indeed, on the point of minority of the victim, there does not seem to be conclusive proof. Further, as pointed out, victim in her chief para 3 itself has deposed about acquaintance, talking and chatting with accused, who according to her, has expressed his liking for her. That, she accompanied him to Jalna and to his sister's place at Daregaon. Again in para 4 of chief itself, she states that there were physical relations between herself and accused. She does not speak about said act to be forceful or against her wish. Therefore, indeed there are good grounds on merits to be dealt, but in appeal. Resultantly, applicant succeeds. Hence, the following order :

ORDER

I. Criminal Application stands allowed.

II. The substantive sentence imposed on the applicant in Special Case No. 28 of 2015 by the District Judge 3 and Additional Sessions Judge, Jalna on 12.03.2026 stands suspended till the final hearing and disposal of Criminal Appeal No. 235 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 the learned counsel appointed to represent respondent no.2 be paid by the High Court Legal Services Sub-Committee, Aurangabad, as per Rules.

[ABHAY S. WAGHWASE, J.]

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