



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 1623 OF 2025
IN CRIMINAL APPEAL NO. 865 OF 2025

Sagar Raju Panchras

..APPLICANT

VERSUS

State of Maharashtra and Another

..RESPONDENTS

....
Mr. U.N. Khiste, Advocate h/f Mr. A.M. Gaikwad, Advocate for applicant
Ms. U.S. Bhosale, A.P.P. for respondent no.1 - State
....

CORAM : RAJNISH R. VYAS, J.
DATE : 27th JANUARY, 2026

PER COURT :

. This is an application for grant of bail and suspension of sentence.
The applicant, who is the original accused, is convicted by the Additional Sessions Judge, Ahmednagar in Special Case No. 135 of 2019 on 22nd October, 2024 for commission of offence punishable under Sections 376(2)(j) (n)(f)(l) of the Indian Penal Code and also under Section 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter would be referred as 'Act of 2012'). The applicant was directed to suffer rigorous imprisonment for ten years and to pay fine of Rs.5,000/- and in default, to suffer simple imprisonment for two months.

2. Learned counsel for the applicant has submitted that the victim of crime was mentally retarded and when her evidence was recorded, she did

not state name of the present applicant as an accused. He further submitted that PW 2 / mother of victim has initially shown suspension against four persons, but ultimately on the basis of DNA report, the applicant is convicted.

3. Learned counsel further relied upon the testimony of DNA carrier, the person who collected the blood samples as well as the Investigating Officer. He submitted that there are contradictions and omissions which would clearly reveal that the DNA report cannot be relied upon.

4. Per contra, learned A.P.P. submitted that the evidence led by the prosecution was cogent and reliable. She submitted that the victim was minor at the time of incidence and mentally retarded, and therefore, her entire evidence was taken into consideration in right manner by the learned trial Court.

5. Learned counsel for Respondent No.2 / victim, appointed through Legal Aid, is not present.

6. With the able assistance of respective counsels, I have gone through the record of the case. The victim is a mentally retarded child and the said fact has been proved by PW 16 / Dr. Ashokkumar Karale, who in his testimony has categorically stated that, when he medically examined the victim, the look of the victim was casual and childish. When her personal history was taken she could able to writ 1 to 10 figures. When she was subjected to clinical diagnostic, it was found that she was found to be

suffering from mild mental retardation and was then referred and advised for IQ testing by the clinical psychologist.

7. PW 2 / mother of victim, in her examination, has categorically stated that the victim had studied upto 7th standard, but she was not in a position to read and write. According to her, before the incidence, the victim was doing household work in the house of Manoj Gandhi. One day she observed enlarged stomach of the victim, and therefore, had taken her for undergoing sonography on 27th August, 2018 in Vedant Hospital, Burudgaon road. In sonography report, it was found that the victim was carrying 26 weeks pregnancy and thereafter the First Information Report, below Exhibit 14, was lodged. She submitted that the victim gave birth to a male child on 11th December, 2018.

8. At this juncture, it is necessary to mention here that PW 2, apart from the victim, is having one more daughter and the present applicant is the husband of that daughter and thus relative. The blood samples of the victim, applicant and other samples of baby were collected for DNA testing. After conducting the relevant tests, it was opined that the victim and the applicant are the biological parents of the child.

9. So far as contention of learned counsel for the applicant that the DNA report cannot be relied upon since the chain of custody of DNA samples is not properly proved, suffice it to say that the trial Court has already

considered the aforesaid aspect and said finding can be looked into at the time of final hearing of appeal.

10. It is pertinent to mention here that while sending the DNA and blood samples to the laboratory, not only the samples of applicant/accused were sent but also the samples of other suspects, except one, were sent and ultimately it was opined that the present applicant is the biological father of the child.

11. At this stage, it is necessary to mention that since the prosecution has established commission of offence under Section 5 of the Act of 2012, presumption under Section 29 of the Act of 2012 has triggered. The applicant has not examined any witness to support his case to rebut the presumption.

12. Considering the fact that the victim was minor at the time of incidence, so also she was mentally retarded and the applicant was her relative, I am not inclined to suspend the sentence. Accordingly, criminal application for suspension of sentence and grant of bail is rejected.

13. Considering the fact that the applicant is in jail, list the appeal for final hearing on 10th February, 2026.

(RAJNISH R. VYAS, J.)

SSD