



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3376 OF 2025
IN
CRIMINAL APPEAL NO. 656 OF 2025

Fakira @ Bapu Natthu Chavan

..APPLICANT

VERSUS

State of Maharashtra and Another

..RESPONDENTS

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Mr. V.B. Patil, Advocate for applicant

Mrs. M.N. Ghanekar, A.P.P. for respondent no.1 – State

Ms. M.S. Hange, Advocate for respondent no.2 (appointed)

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CORAM : RAJNISH R. VYAS, J.

DATE : 12th JANUARY, 2026

PER COURT :

. This is an application for grant of bail and suspension of sentence.

2. Heard Mr. V.B. Patil, learned counsel for the applicant, Mrs. Ghanekar, learned A.P.P. Respondent No.1 and Ms. Hange, learned counsel for Respondent No.2 – victim.

3. The applicant was convicted for commission of offence under Section 6 of Protection of Children from Sexual Offences Act and directed to suffer rigorous imprisonment for twenty years and pay fine of Rs.5,000/-. He was also convicted for commission of offence punishable under Section 377 of

the Indian Penal Code and directed to suffer rigorous imprisonment for five years and pay fine of Rs.3,000/-. The sentences were ordered to run concurrently.

4. Learned counsel for the applicant has contended that the victim, who was seven years boy, was examined as prosecution witness no.2. According to the case of prosecution, on the day of incidence i.e. on 20th June, 2023 when the victim was not seen in the house by his mother i.e. P.W.1, she went for searching him. On the same day, at about 08:00 p.m., the victim boy came carrying a packet of biscuit and the appellant also came behind him. On inquiry, he informed the mother that one person at temple handed over him the packet of biscuit. When same inquiry was put to the appellant, he left the sport in hurry. At that night, victim told P.W.1 that he was having pain in his stomach.

5. On the next day morning, when the victim woke up, he did not show his inclination for going to school for the reason that he had pain in his stomach. However, the victim, on that day, went to school and came back and was keeping silent. When P.W.1 inquired, it was disclosed by the victim that he had vomitted the school. This raised doubt and on further enquiry, it was informed by the victim that while returning from temple 'Baba' (i.e. the appellant) stopped for urinating and had asked the victim that he wanted to

see whether the victim is fair or black, and therefore, removed the victim's pant and shirt.

6. Thereafter the victim was subjected to unnatural sex. The details of incidence is narrated in paragraph no.2 of the examination-in-chief. The said act resulted into lodging of the F.I.R. which is at Exhibit P-12. The criminal law was set in motion and during the course of investigation, the victim was subjected to medical examination. P.W.4 is the medical officer, who examined the victim, stated as under :-

“On genital examination there was swelling on scrotum and contused abrasion of size 1 cm x 0.5 cm x 0.5 cm., reddish. Said injury was within 24 hours. I collected oral swab, anal swab, urethral swab, anal smear, nail scraping, blood sample in plain bulb and EDTA bulb of the victim boy. As per our opinion there was forceful penetration of penis in anal region of the victim. Accordingly, certificate was issued. Certificate now shown to me is the same. It bears my signature and signature of Dr. Sunil Sultage. Contents are true and correct. It is marked as Exh.P-21/PW4.”

7. Learned counsel for the applicant submitted that the story advanced by the prosecution is not believable. According to him, the cross-examination of the victim would reveal that he had categorically stated that the moment he returned from temple on the day of the incidence, he disclosed 'everything' to his mother i.e. P.W.1. Pointing out the aforesaid part

of deposition, learned counsel contended that if 'everything' was disclosed to the mother, there was no occasion for her to wait and lodge the report on the next day, more particularly, when her husband i.e. father of the victim was working with police department. He submitted that the story advanced by P.W.1 – mother of the victim is not trustworthy. The medical evidence also cannot be relied upon, since it is just an opinion.

8. Per contra, learned A.P.P. and learned counsel appointed to represent the victim submitted that the version of victim is supported by the medical evidence i.e. testimony of P.W.4, who specifically stated that there were injuries to the private part of the victim. Learned A.P.P. further submitted that considering the fact that the victim was just seven years of age at the time of incidence and the accused was near about seventy years, it cannot be expected that the victim will narrate the incidence as it is.

9. I have given my thoughtful consideration to the argument advanced by the learned counsel for the respective parties. It is necessary to mention that at the time of incidence, the victim was of seven years and the accused was nearly seventy years. The victim, in his testimony, has categorically stated that he was subjected to unnatural sex, which fact was corroborated by the evidence of P.W.4 – medical officer. The appellant, throughout the trial, was in jail and after conviction presumption of innocence

can not be made applicable to the appellant. Considering the fact that the victim was seven years of age and sustained injuries to his private part and the medical officer had specifically opined supporting the case of the prosecution, I am not inclined to release the applicant on bail during the course of hearing the appeal.

10. Learned counsel for the applicant pointed out that the victim has suffered fracture and is suffering in jail. I believe that the jail authorities will render proper medical assistance to the appellant.

11. In that view of the matter, application for grant of bail and suspension of sentence is rejected. Appeal be expedited. Appropriate steps be taken for calling the record.

12. Fees of Ms. M.S. Hange, learned counsel appointed to represent Respondent No.2 – victim be quantified as per rules by High Court Legal Services Sub-Committee, Aurangabad

(RAJNISH R. VYAS, J.)

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