



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3587 OF 2025

IN

CRIMINAL APPEAL NO. 1068 OF 2023

Kiran s/o Rajebhau Sherekar,
Age : 26 Years, Occu : Agril. and Driver,
R/o. Dongar Pimpla,
Tq. Ambajogai, Dist. Beed.

...APPLICANT

Versus

1. The State of Maharashtra,
Through Police Station Officer,
Police station Ambajogai Rural,
Tq. Ambajogai, Dist. Beed.

2. X

...RESPONDENTS

WITH

CRIMINAL APPEAL NO. 1068 OF 2023

Mr. Gade Akash D., Advocate for the Applicant.
Mr. V. K. Kotecha, APP for Respondent – State.
Ms. Sunita Sonawane, Advocate for Respondent No.2.

CORAM : RAJNISH R. VYAS, J.

DATE : JANUARY 23, 2026

ORDER :

1. This is an application for grant of bail and suspension of sentence. The applicant, who is the sole accused, was convicted in Special (Case) No.41 of 20222, passed by the Special Judge (POCSO Act), Ambajogai, Taluka Ambajogai, Dist. Beed. He was convicted for commission of offence punishable under Section 6 of the Protection of

Children from Sexual Offences Act, 2012 (hereinafter referred to as the “Act of 2012” for the sake of brevity) and Section 506 of the Indian Penal Code, 1860 (hereinafter referred to as the “IPC” for the sake of brevity). The applicant was also convicted for the commission of offence punishable under Section 376AB of the IPC and no separate punishment was awarded in the light of Section 42 of the Act of 2012. For commission of the offence punishable under Section 6 of the Act of 2012, the applicant was directed to suffer rigorous imprisonment for 20 years and fine of ₹ 10,000/-. For the commission of offence punishable under Section 506 of IPC the applicant was directed suffer rigorous imprisonment and pay fine of 5,000/-. Default sentences were also imposed on the applicant.

2. A first information report, i.e., Exhibit 74-C, was lodged on 19th March 2022 with the Ambajogai Rural Police Station, bearing No.49 of 2022, for the commission of offences punishable under Section 376, 376(2)(j), 376AB and 506 of the IPC and Sections 4 and 6 of the Act of 2012, at the instance of the uncle of the victim, against the present appellant.

3. The uncle, who was examined as PW-2 during the course of the trial, has stated that the victim of the crime aged about 8 ½

years old at the time of the incident was subjected to forcible sexual intercourse on 19th March 2022, and therefore, the report was lodged. After arrest of the applicant, the clothes were seized, so also the victim and the applicant were forwarded for the medical examination.

4. It is the case of the prosecution that, since the defence has admitted Exhibit 45-C, which is the birth certificate, the only question which is required to be answered, is whether the offence of forcible sexual intercourse is proved or not in order to invoke the provisions of the Act of 2012.

5. The learned counsel for the applicant submitted that the testimony advanced by the victim is not at all believable. Before dealing with the contention of the counsel for the applicant, it is necessary to narrate the incident in question in brief. According to the victim, who was examined as PW-1 in the prosecution, she in her examination-in-chief, has stated as under :

“I am residing at Dongrapimpla along with my grandparents and uncle. My parents are residing at Pune. I am taking education in 4th Standard at ____ School. The incident took place on 19th March 2022 about 03.30 p.m. in the house of _____ (accused). At the relevant time, I was playing with _____

(friends of the victim) below Tamarind tree. At that time, I left my footwear at the resident of ____ (friend of the victim). Therefore, I went to house of _____. At that time, _____ (accused) called me inside his house. Thereafter, ____ (accused) closed the doors of his house. Then, accused removed his pant. He also removed my pant. Thereafter, he penetrated his penis in my vagina. The victim clarified that आरोपीची अवघड जागा म्हणजे त्याची सु ची जागा आणि तिची अवघड जागा म्हणजे तिची सु ची जागा. At that time, I have raised alarm. However, accused gagged my mouth by his hand. Thereafter, I went to the house of elder mother namely Kalinda.”

6. In the light of the aforesaid testimony, the learned counsel for the applicant has invited my attention to the cross-examination conducted. He submitted that, as per the cross-examination of PW-1, the applicant, on the day of incident, in the morning itself had gone to the Ambajogai and thereafter had not returned. He thus submitted that, if that is the admission given by the victim of the crime, then there is no question of applicant performing any forcible sexual intercourse on the victim, on the day of the incident.

7. He further submitted that it is also admitted by the victim in her cross-examination that, on the day of incident, her school

timings were over at 12.30 p.m., and thereafter she returned home, when her aunt took her and went to the field. According to the learned counsel for the applicant, the testimony of the witness shows that the victim was thereafter taken to the field by the aunt, and therefore, again the question remains whether act was really performed by the applicant or not. He submitted that the day on which the incident had taken place was Saturday, and on every Saturday she used to visit the field. He thus submits that the genesis of crime is suppressed by the prosecution. In fact, according to him, the applicant was not even present on the spot.

8. The learned counsel for the applicant further submitted that, in medical examination of the witness also, nothing incriminating was found. He further invited my attention to the testimony of PW-3, who conducted the initial medical examination of the victim, and thereafter to the testimony of PW-5.

9. PW-3 was, at the relevant time, attached to the S.R.T. R. Hospital, Ambajogai, as a Medical Officer, whereas PW-5 was working on the post of Assistant Professor, OBGY Department of S.R.T.R. Hospital, Ambajogai. Inviting my attention to the testimony of this witnesses, he submitted that, had there been any forcible sexual

intercourse, there would have been injuries on the person of the victim. He thus submitted that even the medical evidence supports the defence and falsifies the story advanced by the prosecution.

10. He further submitted that present applicant is behind bars since the year 2022 and, considering the fact that the sentence imposed upon the applicant is 20 years, he be released on bail.

11. Per contra, learned APP submitted that the age of the victim is not disputed, and therefore, the presumption is required to be raised under Section 29 and 30 of the Act of 2012. He submitted that there is no reason to disbelieve the testimony of a minor girl.

12. Ms. Sunita Sonawane, learned appointed counsel for the victim, has also supported the stand taken by the prosecution and has submitted that, if the testimony of witnesses is perused, it would reveal that there is a ring of truth in the version advanced by the prosecution through the witnesses.

13. With the able assistance of the learned counsels, I have gone through the record of the case and have given my thoughtful consideration to the arguments advanced.

14. Admittedly, the victim was 8 ½ years old at the time of the incident. The birth certificate at Exhibit 45 was admitted by the defence.

15. So far as the question of commission of the offence of forcible sexual intercourse is concerned, the testimony of PW-1 is already discussed (supra). Suffice it to say that the victim has categorically stated that she was subjected to forcible sexual intercourse.

16. Apart from it, the testimony of PW-5 is perused, she has deposed that, from the local examination of the victim, the possibility of penetrative sexual assault cannot be ruled out. Though she was subjected to the cross-examination, it would be enough to say that, at the stage of considering the application for suspension of sentence and grant of bail, detailed scrutiny of evidence may not be required.

17. Further, PW-5 has also stated that, on local examination, she found a hymenal tear at the 6 O'clock position. In cross-examination, the witness had denied to say that, in case of forceful penetration by adult male on minor victim, there should be bruises, abrasion, laceration etc. in each case.

18. Be that as it may, nothing has been brought on record by the learned counsel to show that there was any reason for false implication, except the answer given in 313 statement, more particularly the question No.43. The defence had advanced a reason for false implication that, since the applicant and the mother of the victim used to talk on telephone, on the basis of suspicion, a false report is filed. I do not find any substance in the defence taken by the applicant. Be that as it may, since the prosecution has tendered reliable and cogent evidence, which has resulted into conviction of the applicant, at this stage, I am not inclined to release the applicant on bail. Needless to mention that presumption which was available to the accused of innocence is now wiped out by way of pronouncement of judgment of conviction.

19. In that view of the matter, the application is dismissed.

20. The learned counsel, Ms. Sunita Sonawane, has assisted the Court ably and therefore her fees be quantified at ₹ 7,000/-.

(RAJNISH R. VYAS, J.)