



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO. 3628 OF 2025
IN
CRIMINAL APPEAL No. 718 of 2025**

**KISHOR PANDIT SURYAWANSHI AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA**

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Advocate for the applicants : Mr. Mukul Kulkarni
A.P.P for Respondent/State : Mr. S. R. Wakale
Advocate for Respondent No.2 : Ms. Pramila V. Giri (Appointed)

**WITH
CRIMINAL APPLICATION NO. 2973 OF 2025
IN
CRIMINAL APPEAL NO. 564 OF 2025**

**JAYESH NEHARU SURYAWANSHI
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

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Advocate for the applicant : Mr. Chaitanya C. Deshpande
AGP for Respondent/State : Mr. S. R. Wakale
Advocate for Respondent No.2 : Ms. Pramila V. Giri (Appointed)

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**CORAM : SANDIPKUMAR C. MORE AND
ABASAHEB D. SHINDE, JJ.**

**RESERVING ON : JANUARY 22, 2026
PRONOUNCING ON : MARCH 09, 2026**

FINAL ORDER (PER SANDIPKUMAR C. MORE, J):-

1. The applicants in Criminal Application No. 3628 of 2025 are the original accused Nos. 1 to 4 in Special Case No. 113 of 2023 and the applicant in Criminal Application No. 2973 of 2025 is the accused No.5 in the aforesaid case.

2. By these applications, the applicants, who are the original accused in the aforesaid case, are seeking suspension of their substantive sentences of imprisonment awarded to them by the learned Special Judge (POCSO) and Additional Sessions Judge, Dhule (hereinafter referred to as the “Learned Trial Judge”) in the aforesaid case vide judgment and order dated 26.06.2025, during the pendency of these appeals and also their release on bail. Since the applicants in both these applications are original accused from the same case, we deem it proper to decide both these applications jointly.

3. All these applicants are convicted by the learned Trial Judge as under :-

(I) Accused Nos. 1) Kishor Pandit Suryawanshi, 2) Chhotu @ Prasad Ratilal Bagul, 3) Chetan Bhatu Bagul, 4) Sandesh Ramdas Sable, 5) Jayesh Neharu Suryawanshi are convicted vide Section 235(2) of the Code of Criminal Procedure for the offences punishable under Section 376-D, 376-DA, 363 and 366 read with 34 of the Indian Penal Code and Section 4 and 6 of The Protection of Children From Sexual Offences Act, 2012.

(II) Accused Nos. 1) Kishor Pandit Suryawanshi, 2) Chootu @ Prasad Ratilal Bagul, 3) Chetan Bhatu Bagul, 4) Sandesh Ramdas Sable, 5) jayesh Neharu Suryawanshi are

sentenced to suffer imprisonment for life, which shall mean imprisonment for the remainder of their natural life and each accused to pay fine of Rs. 10,000/- (Rs. Ten Thousand only) in respect of offence punishable under Section 376-DA r/w 34 of the Indian Penal Code. In default of payment of fine, each of them is further sentenced to suffer simple imprisonment for two months.

(III) Accused Nos. 1) Kishor Pandit Suryawanshi, 2) Chhotu @ Prasad Ratilal Bagul, 3) Chetan Bhatu Bagul, 4) Sandesh Ramdas Sable, 5) Jayesh Neharu Suryawanshi are sentence to suffer simple imprisonment for one year, and each accused to pay fine of Rs. 1,000/- (Rs. One Thousand only) in respect of offence punishable under Section 363 r/w 34 of the Indian Penal Code. In default of payment of fine, each of them is further sentenced to suffer simple imprisonment for fifteen days.

(IV) Accused Nos. 1) Kishor Pandit Suryawanshi, 2) Chootu @ Prasad Ratilal Bagul, 3) Chetan Bhatu Bagul, 4) Sandesh Ramdas Sable, 5) Jayesh Neharu Suryawanshi are sentenced to suffer simple imprisonment for two years, and each of them to pay fine of Rs. 2,000/- (Rs. Two Thousand only) in respect of offence punishable under Section 366 r/w 34 of the Indian Penal Code. In default of payment of fine, each of them is further sentenced to suffer simple imprisonment for one month. ”

4. As per the prosecution story, grand-daughter of the informant, who is the victim in the instant case, was aged about 13 years at the time of incident. When the informant on

03.06.2023, made enquiry with her, she disclosed that on the same day in the Wee hours at about 1.00 a.m., when she had gone to attend nature's call, all these applicants/accused caught hold of her and by taking her in the field of one Govinda Gaikwad, applicant Chottu @ Prasad and applicant-Chetan committed forcible sexual intercourse with her, whereas the other applicants facilitated them to commit the offence.

5. The learned counsel for the applicants, who are original accused Nos. 1 to 4, submits that the learned Trial Judge did not appreciate the facts on record in proper manner and wrongly convicted them, despite there being no supportive medical evidence to the version of victim on record. He pointed out that, the Medical Officer, who examined the victim, has in fact stated that there were no external injuries found on the private part of the victim, and therefore, it can be gathered that the story of the prosecution about forcible sexual intercourse with the victim, is suspicious. He also submitted that, the Medical Officer i.e. P.W.4 Dr. Vaishali Shirsath, further admitted in the cross-examination that she was unable to give any opinion regarding examination of the victim, even at the time of deposition. Further, according to her, hymen of

the victim might have torn prior to the date of incident, as there are multiple reasons for such hymen torn. Moreover, the learned counsel for the applicants also submitted that the victim was examined by the said Medical officer belatedly i.e. on 5.6.2023. Thus, he prayed for release of the applicants by suspending their substantive sentences of imprisonment.

6. As against this, the learned counsel for applicant / accused No.5 in Criminal Application No. 2973 of 2025 submits that, there is no role of this applicant in the commission of the crime and even the informant in the F.I.R itself stated that the victim told her that he was only present at the time of incident and left from there without raising any protest.

7. On the contrary, the learned A.P.P. as well as the learned counsel for respondent No.2/ victim, strongly supported the conviction of the applicants /accused and submitted that, the learned Trial Judge after considering the entire material on record, has convicted them. According to them, all applicants have committed crime against society and the evidence of victim about the alleged criminal act of the applicants is consistent and supported by the scientific evidence, such as DNA report. As such, there is no case made out by the

applicants for their release on bail.

8. On-going through the evidence on record and the impugned judgment, it is evident that the prosecution is claiming that accused No.1 Kishor Suryawanshi pressed mouth of the victim, accused No.2 Chottu @ Prasad and accused No.4 Sandesh caught hold of her legs and took her in the agricultural field of Govind Gaikwad and there accused No.2 Chottu @ Prasad and accused No.3 Chetan committed forcible sexual intercourse with the victim. As such, there appears active role of these accused Nos. 1 to 4 in the commission of the crime. The prosecution has also claimed that, accused No.5 Jayesh had also come there and saw the incident, but he left the spot instead of restraining the other accused.

9. It is significant to note that, as per the informant also, the victim did not narrate her about any active role of accused No.5 Jayesh. As per the FIR, the victim had only told her about the presence of Jayesh, but did not state about any overtact by him. Moreover, though the victim, while deposing before the Court, has stated that accused No.5 Jayesh had lifted her from the back side, but she has not stated anything against him further. Even while deposing about the main

incident of committing forcible sexual intercourse with her, she did not state anything about accused No.5 Jayesh. On the contrary, she is consistent with the prosecution story in respect of the act performed by accused Nos. 1 to 4.

10. Learned counsel for the applicant/accused Nos. 1 to 4 tried to argue that the Medical Officer Dr. Vaishali Shirsat, who had examined the victim, did not find any injury to the private part of the victim and stated that there were multiple reasons for tearing of hymen of the victim. However, such argument can be considered at the time of final hearing. At this juncture, there is *prima facie* evidence against the involvement of applicants/accused Nos. 1 to 4 in the crime and the scientific evidence in the form of DNA report supports the prosecution case. Under such circumstances, we are not inclined to suspend the substantive sentences of imprisonment awarded to applicants/accused Nos. 1 to 4 in Criminal Application No. 3628 of 2025. However, considering the role of applicant/accused No.5 in Criminal Application No. 2973 of 2025 as mentioned above, he can be released on bail during the pendency of his appeal. As such, we pass following order.

O R D E R

(A) Criminal Application No. 3628 of 2025 stands rejected, whereas Criminal Application No. 2973

of 2025 is hereby allowed.

- (B) The substantive sentence of imprisonment imposed upon the applicant/accused No.5 Jayesh Neharu Suryawanshi in Spl. Case No. 113 of 2023 under judgment and order dated 26.06.2025 passed by the learned Special Judge (POCSO) and Additional Sessions Judge Dhule, is hereby suspended during the pendency of this appeal and he is released on execution of P.R. Bond of Rs.25,000/- (Rupees Twenty Five Thousand only) with one or more sureties in the like amount.
- (C) The fees of the learned counsel for respondent No.2 (appointed) in both the applications is quantified to Rs.6000/- (Rupees Six Thousand only) and it be paid by the High Court Legal Services Sub Committee, Aurangabad to her as expeditiously as possible.
- (D) The applications are accordingly disposed of.

(ABASAHEB D. SHINDE)
JUDGE

(SANDIPKUMAR C. MORE)
JUDGE

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