



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

**911 CRIMINAL APPLICATION NO. 3941 OF 2025
IN APPEAL/708/2024**

PRAKASH BABURAO KADUSKAR

....Applicant

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

.....Respondent

WITH

CRIMINAL APPEAL NO. 708 OF 2024

Mr. S. E. Shekade, Advocate for the applicant

Mr. V. K. Kotecha, APP for the respondents/State

Ms. Smita Kasture, Advocate for the respondent No. 2

CORAM : RAJNISH R. VYAS, J.

DATE : 28th JANUARY, 2026

PER COURT :

1. This is an application for grant of bail and suspension of sentence.
2. At the outset, it is necessary to mention here that on 09-07-2025 when an application for grant of bail and suspension of sentence was listed, it was not pressed and leave was sought to withdraw the application with liberty to file the same at appropriate stage.
3. In this background present application is being preferred by the original accused.

4. The applicant/original accused is challenging the judgment of conviction in Special Case No. 194/2022 by the Extra Joint District Judge and Additional Sessions Judge, Ahmednagar dated 06-05-2024 for commission of offences punishable under Sections 354, 376(2)(i)(j)(n), 376 (3) and 506 of the Indian Penal Code [for short 'the IPC'] and Section 4, 6 & 8 of the Protection of Children From Sexual Offences Act, 2012. Maximum sentence imposed is of 20 years.

5. Learned Advocate for the applicant submitted that there is delay in lodging the First Information Report. Further if cross-examination of the victim is perused, it would be crystal clear that the victim of the crime had participated in the relationship. He submitted that there were continuous phone calls between the victim and applicant which is admitted by the victim. He further submitted that the victim was having age of understanding, since she was 15 years and 10 months old. Learned Advocate for the applicant further submitted that medical evidence failed to support the case of the prosecution. He, in the aforesaid background, requested for grant of bail and suspension of sentence.

6. Per contra the learned APP contended that the prosecution has proved the age of the victim and accordingly under Section 2 (d) of the Act of 2012 the victim is minor. He submitted

that testimony of victim is perused and tested in the light of the medical evidence, it would crystal clear that the applicant has committed the offence and therefore, was rightly convicted.

7. Ms. Smita Kasture, learned Advocate for the respondent No. 2 has contended that considering the age of the victim and manner in which the applicant has subjected the victim to the forcible sexual intercourse, the application may not be allowed.

8. With the assistance of the learned advocates I have gone through the record of the case. The victim of the crime was examined by the prosecution during the course of the trial as PW-1. The victim has stated that her date of birth is 16-09-2006. In March, 2022 the victim was 15 years and 9 months old. She stated that the accused was friend of her father who frequently visited their house. He used to bring food packet for her and used to feed her by moving his hand on her head, back and chest. He used to say that he loves the victim. On one day, he told that he had some work and therefore called the victim near the lake. The victim stated that in the month of March, 2022 the appellant called her in evening and when the victim reached to that place, appellant pulled her close and kissed her on cheek and lips. The victim tried to push him away but, he forcibly hugged her by pulling with his hand and further had committed forcible sexual intercourse by pressing her mouth.

9. The victim has admitted in her cross-examination that she used to talk on telephone with the appellant. In cross-examination the victim has stated as under:

“It is true to say that when accused was moving his hand on my body or while doing sex with me, I have not shouted for help.”

10. At this stage, it may not be necessary to discuss the evidence at length. But, the fact remains that manner in which the cross-examination has been done would clearly reveal that in fact defense has not seriously disputed the fact of forcible sexual intercourse. Thus, it can be said that there is element of truth in her case advanced by the prosecution. Further the defense has admitted the medical legal examination report of sexual violence which is at Exh.52, page 50, column 16 and if perused, it would reveal that in the chart it is mentioned that hymen is irregular (tears old in nature). Further no case of any fresh injury noticed.

11. Thus, it is crystal clear that hymen tear is old in nature.

12. So far as the age of the victim is concerned, father of the victim who was examined as PW-2 has stated that date of birth of the victim was 16-09-2006 and in the year 2022 the victim was 15 years and 10 months old. Exh.71 is the birth certificate whereas Exh.70 is the extract of birth register which clearly shows that date of birth of

the victim was 16-09-2006. The applicant was on bail during the course of the trial. Though the accused was on bail during the course of trial by way of conviction, presumption of innocence which was available to the accused is now wiped out.

13. Considering the fact that the presumption under sections 29 and 30 of the said Act has triggered on the basis of foundational facts proved by the prosecution and since it is not rebutted, I find no reason to entertain the present application. In view of the same, I find no reason to suspend the sentence imposed upon the applicant for commission of offence punishable under Sections 354, 376(2)(i) (j)(n), 376 (3) and 506 of the the IPC and Section 4, 6 & 8 of the Protection of Children From Sexual Offences Act, 2012 in Special Case No. 194/2022 by the Extra Joint District Judge and Additional Sessions Judge, Ahmednagar dated 06-05-2024. In view of above, application stands dismissed.

14. Since the applicant/appellant is in jail, list the appeal for final hearing on 13-02-2026, by way of last chance.

15. The learned Advocate Ms. Smita Kasture appointed has ably assisted the court and therefore, her fees be quantified at Rs.7,000/-.

[RAJNISH R. VYAS, J.]