



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4372 OF 2025

IN

CRIMINAL APPEAL NO. 232 OF 2025

Sunil Balaji Suwarnakar

...Applicant

Versus

The State of Maharashtra and Another

...Respondents

IN

CRIMINAL APPEAL NO. 232 OF 2025

Mr. Salunke Sudarshan J., Advocate for the Applicant

Ms. M. N. Ghanekar, APP for Respondent – State.

CORAM : RAJNISH R. VYAS, J.

DATE : JANUARY 21, 2026

PER COURT :

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

2. The applicant, who is the original accused, was convicted for commission of offences punishable under Section 18 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the “Act of 2012” for the sake of brevity), the applicant is convicted for the attempt to commit unnatural sexual intercourse as made punishable under Section 18 of the Act of 2012 and directed to suffer rigorous imprisonment for 10 years and to pay a fine of ₹

5,000/-.

3. The case of the prosecution in brief is that the victim, who was a five year old girl was subjected to forcible sexual intercourse / unnatural intercourse at the hands of the appellant.

4. In this background, if the testimony of the father of the victim is perused, he has categorically stated in his examination-in-chief that on 03rd September 2019, at about 01.30 to 01.45 noon the incident took place. On that day, at about 11.45 in the morning, he along with his wife went to the agricultural field for doing the work and the victim was in a house along with other children, so also mother and father of PW-1 / father of the victim.

5. His deposition further reveals that at about 03.00 O'clock his father came to the agricultural field and informed that the blood was oozing from the anus of the victim child and she was subjected to rape, and therefore, PW-1 was called.

6. Thereafter, PW-1 and his wife reached the house and found child crying. On being enquired, the victim disclosed to the father that she was beaten by one boy. When PW-1 enquired as to what exactly happened, the victim narrated that when she went to the neighbour's

house for watching the television, one boy was present there, who removed nicker of the victim, so also his clothes and thereafter penetrated his penis into the anus of the victim. The victim thereafter showed the house and the said body. The said boy was the appellant.

7. The victim during the course of investigation was subjected to the medical examination, at the hands of PW-7, Dr. Syed Zahur Mazhar Ali. In his examination-in-chief, PW-7 stated that on local examination of genitals, anus and oral cavity, he found hymen was intact, urethra was normal, however, noticed perineal scar at 6 O'clock position, 1.5 cm x 1.00 cm, mucosa deep on the anus. He also found mucosal laceration at 12 O'clock position. He submitted that the blood sample and anal swab of the victim were also obtained. He opined that the injuries are suggestive of application of force and overall findings were suggestive of forceful unnatural sexual intercourse.

8. The clothes of the victim and the blood were forwarded to the forensic laboratory. CA report, more particularly Exhibit 61 shows the blood group of the victim was "A". Further Exhibit 63, more particularly clothes forwarded therein of the victim i.e. Small Legging, Janghya, Small frock, were also found stained with blood group "A".

9. The learned counsel for the appellant submitted that even the appellant was subjected to the medical examination and the concerned Medical Officer had clearly noted that no injuries were found on the private part of the appellant. He therefore submitted that there was absolutely no material available to convict the appellant for the offences charged, more particularly for commission of offence punishable under Section 18 of the Act of 2012. He further submitted that the victim of the crime, who was 5 years old, was not examined by the prosecution to bring home the charge.

10. According to him, by not examining the victim, the genesis of the crime was suppressed. He further contended that the appellant is behind the bars since 04th September 2019, which come approximately to 6 years 4 months and maximum punishment imposed upon the applicant is of 10 years. He taking benefit of provisions of Code of Criminal Procedure, more particularly Section 436A submits that the applicant has already completed more than half of the sentence and thus he be released on bail.

11. Per contra, learned APP, Ms. Ghanekar, submitted that the testimony of the father of the child is trustworthy. She further

submitted that just because the victim is not examined, it doesn't mean that the prosecution had not proved the case beyond the reasonable doubt. According to her, the corroborative pieces of evidence if clubbed together would clearly reveal that the appellant had committed crime in question.

12. With the help of learned counsels I have gone through the depositions and C.A. report and also considered the arguments advanced by the learned counsels.

13. Section 436A of Cr.P.C. read as follows :

“436A. Maximum period for which an undertrial prisoner can be detained. – Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such

person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.”

14. It says that where a person during the period of investigation or trial under the Code of offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law), has undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his persona bond.

15. The said provision cannot be read into isolation. The provision will have to be read in the background of the statement and objects of reasons and the necessity of introducing the Act of 2012. The Act of 2012 was introduced by the legislature in order to control and eradicate the atrocities committed on the child, who are future of nation. Further Section 436-A doesn't say that in every case by making mathematical calculation, the accused is required to be

released on bail, if half of the sentence is undergone.

16. In the matter in hand though the victim of crime, who was 5 years old, was not examined, fact remains that the corroborative piece of evidence in the form of testimony of the father, medical evidence in the form of examination of PW-7, so also the CA report discussed above, would clearly reveal that the appellant was convicted by the Trial Court by appreciating the evidence on record in correct and proper manner. It is further necessary to mention here that the Act of 2012 also introduces Sections 29 and 30, which speaks about raising of presumption regarding the mental status of the accused. The said presumption is not rebutted by the defence by leading cogent and reliable evidence.

17. By way of conviction, the presumption of innocence which was available to the accused is now wiped out. Considering the fact that the evidence produced on record in the form of testimony and medical record, proves, the ingredients of offences in which the appellant was convicted, and thus I am not inclined to release the applicant on bail. Accordingly, the application for suspension of sentence and grant of bail is rejected.

18. Since the accused is in jail, the appeal can be taken up for final hearing. Therefore, call for record and proceedings within four weeks and put the matter for final hearing thereafter.

(RAJNISH R. VYAS, J.)