



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

**CRIMINAL APPLICATION NO. 62 OF 2026
IN APEAL/6/2026**

**WITH
CRIMINAL APPEAL NO. 6 OF 2026**

SANTOSH BHIMAJI GANDHADE

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

...

Advocate for Applicant : Mr. Z.H. Farooqui

a/w. Mr. Nitin V. Gaware Patil

APP for Respondent No. 1 : Mr. V.K. Kotecha

Advocate for Respondent No. 2 : Mr. Amol S. Gandhi

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CORAM : RAJNISH R. VYAS, J.

DATE : 20TH FEBRUARY, 2026

PER COURT :

1. This is an application for the grant of bail and suspension of sentence filed by the original accused.

2. The original accused has challenged his conviction awarded by the Additional Sessions Judge, Ahmednagar, dated 11.12.2025, in Sessions Case No. 226/2019 for the commission of offences punishable under Sections 376, 452 and 506 of the Indian Penal Code (hereinafter referred to as 'the IPC' for the sake of brevity). The applicant / original accused was directed to suffer rigorous imprisonment for ten years and pay a fine of Rs. 50,000/- in default of payment to suffer simple

imprisonment for six months for the commission of the offence punishable under Section 376 of the IPC. So far as convictions under Sections 452 and 506 are concerned, the trial Court has awarded a punishment of one year and a fine of Rs. 500/-, in default of payment, to suffer simple imprisonment for one month. The sentences were directed to run concurrently.

3. The applicant was acquitted of the commission of an offence punishable under Sections 326 and 504 of the IPC.

4. Since this is an application for suspension of sentence and grant of bail, the parameters laid down by the Hon'ble Apex Court are taken into consideration, for deciding the application, which are as follows :

- a. Suspension of sentence and grant of bail is not a right, but it is a relief.
- b. While suspending a sentence, the antecedents of the accused are required to be taken into consideration.
- c. The quality of evidence and whether there are chances of success in an appeal are to be considered.
- d. No detailed re-appreciation of evidence is required to be done at this stage.

5. In this background, I have considered the contentions advanced by the respective parties.

6. Learned counsel Mr Nitin Gaware Patil, appearing for the original accused/applicant, has argued as under :

- a. The appellant / accused, as well as the victim of the crime at the time of the incident, were major in the eyes of the law.
- b. The accused was 35 years of age, whereas the victim was 32 years of age.
- c. There is an unexplained delay of four days in lodging the First Information Report.
- d. The injuries on the person of the accused are absent, though according to the victim, a scuffle took place at the time of the incident, during which she pushed the accused, causing him to fall on the sewing machine.
- e. The victim is in the habit of lodging first information reports of a similar nature against various persons, and Exhibit 53 supports his case.
- f. The conduct, previous and subsequent, of the victim of crime speaks volumes for itself.
- g. The version of the witnesses does not inspire confidence.

h. The sentence imposed is of a fixed term, and the accused was on bail for a substantial period during the trial.

7. Per contra, Mr Kotecha, learned APP contended as under :

- a. The testimony of the victim is cogent and reliable.
- b. There is no delay in lodging the FIR, and even otherwise, delay in the peculiar facts and circumstances of the case would not be material.
- c. Testimony of victim and P.W. 4, who, though he can be called as a chance witness, but in fact is a natural witness, shows that there is a ring of truth in the case of the prosecution.
- d. All the first information reports that are tried to be encashed by the accused are after the date of the incident.
- e. The notice below exhibit 50 and reply below exhibit 51 would reveal that those were exchanged between the builder/developer and the victim, and not the accused.
- f. No specific defence has been taken by the accused. The suggestions will not constitute evidence as are denied.

8. Mr Gandhi, learned counsel for the victim, has tendered a copy of the affidavit-in-reply during the course of the hearing. He contended as follows:

- a. The documents filed along with the reply, more particularly, various first information reports lodged against the accused, clearly reveal that he is not entitled to bail.
- b. After the conviction of the accused, the chapter proceedings and criminal cases were registered against his client at the instance of a follower of the appellant. According to him, the applicant is politically influential.
- c. He contended that although the victim is now residing in Pune, her safety is of paramount importance, and the release of the applicant on bail may result in threats to the victim and her family members.

9. As already stated, the application will have to be decided in the light of parameters laid down by the Hon'ble Apex Court, where a detailed examination is not permissible.

10. With the help of learned counsels, I have gone through the testimony of P.W. 1. According to her, her husband was working as a driver with the accused, and she had purchased one plot from Shivsahara Complex for valuable consideration of Rs. 12,30,000/-. The accused was a mediator in the said case. The said transactions took place in the year 2015. In the testimony, she narrated that on 18.08.2018, the accused

demanded sexual favour from her and, therefore, on 19.08.2018, she lodged a report to the Superintendent of Police.

11. On 20.08.2018, when she returned home after dropping her children at school at about 9 in the morning, the accused entered the house and demanded the sexual favours which the victim denied. The accused then threatened her that he would cancel the sale deed and the agreement executed regarding the aforesaid property. At that time, the victim pushed him onto the diwan and went to the kitchen, at which point the sewing machine hit the accused. She deposed that a scuffle took place between both of them and, thereafter, she was subjected to sexual intercourse. The victim, who was sitting in the house, was crying and accusing while leaving the home, told that the police can not do anything. According to her, from 20.08.2018 to 24.08.2018, she regularly visited the police station to lodge the report, and on 24.08.2018, her report was finally taken.

12. In cross-examination, she admitted that the flat in which she is residing is situated on the ground floor and there is a parking space and one office on the same floor. She admitted that the staircase is adjacent to the flat. She further admitted that the vehicles are parked in the parking lot in the morning, at noon, and in the evening, and that Mr Chaugule,

resides on the first floor. She admitted that the Parner police station is 2 km away from her shop.

13. She deposed that at the relevant time, her husband did not visit the house every day. On 18.08.2018, her husband was on duty and on 21.08.2018, he returned home. She admitted that her maternal house is located 15 to 16 km from her house. She deposed that she had disclosed the incident to her mother over the telephone and that, on that day, she went to the police station. She admitted that on 18.08.2018, she contacted her husband on the telephone and narrated the incident. Since the husband was on duty, he could not come. She further admitted that she had two children who used to attend school in Parner, and that she used to drop them off in a four-wheeler. She further admitted that immediately after the incident dated 18.08.2018, at about 09:30 to 10 o'clock, she telephonically called her husband, narrated the incident, and requested him to return immediately. Still, at that time, he was in Ahmedabad. She deposed that her husband returned on 21.08.2018 at 11:30 p.m. and was at home till 24.08.2018.

14. The notice issued by the promoters/builder, through Advocate More to the victim, was shown to her and marked as Exhibit 50. Exhibit 51 was the victim's reply to the said notice. She admitted that

the proprietor of Shivsahara Complex has filed Special Civil Suit No. 107/2018 against her, and that the certified copy of the suit was marked as Exhibit 52 below. The sale deed exhibited by one Ankush Ambadas Thopate, in her favour, was shown to her and marked as exhibit 53.

15. She denied the suggestion that she had filed a criminal case for the commission of an offence punishable under Section 376 of the IPC and under the provisions of the Protection of Children from Sexual Offences Act, against Ankush Ambadas Thopate, and that, to settle the matter, the sale deed below, Exhibit 53, was executed.

16. She admitted that the accused had also lodged a case which is pending in the Sessions Court, Ahmednagar, which bears Sessions Case No. 7/2025, and the wife of the accused has also lodged a similar case bearing No. 127/2025. She admitted that one Mangesh Hule has lodged FIR no. 350/2022 against her, in which she was arrested.

17. In cross-examination of the witness, the omissions (more particularly at paragraph no. 12) were brought to her attention and were proved through the Investigating Officer. These omissions concerned key details, such as the demand for sexual favours on 18.08.2018, the lodging of a complaint with the Superintendent of Police on 19.08.2018, the act

of pushing the accused onto the bed, the sewing machine hitting the accused's back, and the physical scuffle between the accused and the victim.

18. P.W. 2 was a panch who did not support the seizure of clothes or the prosecution.

19. P.W. 3 was the husband of the victim, who stated that he was working as a driver with one transport company, and on 20.08.2018, he received a phone call from Arjun Shinde, who disclosed that the victim was subjected to forcible sexual intercourse, and it was committed by the accused. He deposed that on 21.08.2018 at 11:30 at night, he came and inquired from the victim who narrated the incident. P.W. 2 also stated that the victim had told him that she had been to the police station, but the Parner police were not taking the complaint, and on 18.08.2018, she submitted the complaint to the office of the Superintendent of Police. This witness was subjected to cross-examination, during which he admitted that, upon receiving the phone from Arjun Shinde, he neither contacted the relatives nor requested them to visit his house. He submitted that after coming home at 11:30 p.m., he stayed at home and on the second day, he went to the Parner police station, where his complaint was not taken. He admitted that his wife was arrested.

20. P.W. 4 is Arjun Shinde, who, according to the prosecution, is a star witness and whose testimony is cogent and reliable. P.W. 4 had stated that he is the relative of the victim, and on 20.08.2018, he had been to the house of the victim, at which time, she was crying, and after some time, she disclosed that she was subjected to sexual intercourse by the accused. In cross-examination, he admitted that he visited the house of the victim between 9 o'clock and 09:30 in the morning. At that time, the door of the house was open, and he was there for 10 to 15 minutes.

21. P.W. 5 is a witness to the spot incident.

22. P.W. 6 is the doctor who medically examined the victim and the accused. The accused was medically examined on 29.08.2018, i.e., more than one month after the incident, whereas the victim was examined on 25.08.2018. P.W. 6 had stated that she had not given any opinion in her report.

23. P.W. 7, the Investigating Officer, admitted that he had not seized any CCTV footage. He further denied that from 20.08.2018 to 24.08.2018, the witness had visited the police station to lodge a report. Omissions were proved, and so was the question mark.

24. The brief discussion of the testimonies of witnesses would reveal that there is a delay in lodging an FIR without there being any just and proper explanation. P.W. 4 has categorically stated that he visited the victim's house between 09:00 and 09:30 in the morning on the day of the incident. In contrast, the victim specifically stated that the incident occurred at 9 o'clock. The conduct of P.W. 4, who is a relative of the victim, in not taking any immediate action, and the conduct of the husband in not taking the expected steps against the accused, *prima facie*, show that the appellant has an arguable point in the appeal. Commenting something more upon the testimony at length would not be permissible at this stage, but suffice it to say that the appellant has made out various grounds. The fact cannot be ignored that the foundation/genesis of the crime was a civil dispute; the victim was 32 years old, while the appellant was 34. The spot and timing of the incident will also be factors to be taken into consideration at the time of the final hearing.

25. Mr Gandhi, learned counsel for the victim, has invited my attention to the affidavit filed on record, as well as various first information reports. At this stage, it is necessary to note that the First Information Reports filed by the victim and her family members were registered before the appellant's conviction. The victim had preferred an

application for cancellation of bail dated 14.10.2022 (below exhibit 13) in Sessions Case no. 226/2019 before the trial Court, narrating the subsequent registration of first information reports against the accused. The said application was decided by the Additional Sessions Judge, Court No. 2, Ahmednagar, on 07.07.2023, by a detailed order. The trial Court dismissed the application for cancellation of bail. Nothing has been brought to my notice to suggest that the aforesaid order was challenged before a higher forum or that it was set aside.

26. As for the police station's initiation of proceedings against the victim after the appellant's conviction, there is nothing to show that these proceedings were initiated at the accused's behest. The contention made by the learned counsel, Mr Gandhi, that the followers of the applicant committed the act, is without any substance. It is further clarified that the observations made above are *prima facie* and with a view to deciding the application for suspension of sentence.

27. There are a few additional factors that are also required to be taken into consideration while deciding the present application. The applicant was on bail for a substantial period during the trial. The non-bailable warrant issued against him was executed on 01.11.2025, and the order of conviction was passed on 11.12.2025. The fact remains that he

was on bail for a substantial period. The sentence imposed upon the applicant is of fixed term, and, considering the applicant's age, he may be required to undergo the same if the appeal is decided otherwise. No doubt it is an offence against a woman and will have to be looked with all seriousness, but fact remains that evidence on record shows that there are merits in the appeal and there is likelihood that it may be decided in favour of the appellant.

28. The victim's apprehension of a threat to her life can always be taken care of by the Court of law.

29. Considering the aforesaid background and since the arguable points are involved in the case, I am inclined to allow the application.

Accordingly, the following order is passed :

ORDER

- i. Criminal Application is allowed.
- ii. The sentence imposed upon the applicant for commission of offences punishable under Sections 376, 452 and 504 of the IPC, maximum of which is 10 years, awarded in Sessions Case No. 226/2019, passed by the

Additional Sessions Judge, Ahmednagar, shall stand suspended till final decision on appeal.

iii. The applicant be released on bail on the same terms and conditions as were imposed by the trial Court.

iv. In case of misuse of liberty by the applicant, the prosecution and victim are at liberty to prefer an application for cancellation of bail.

v. Since the record and proceedings are already received and all the counsels have shown their inclination to argue the Criminal Appeal finally, put the Criminal Appeal in the second week of April, 2026.

vi. Criminal Application stands disposed of.

(RAJNISH R. VYAS, J.)