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

**CRIMINAL APPLICATION NO. 275 OF 2026  
IN APEAL/42/2026**

**GANESH HOTLAPPA ALIAS PRABHAKAR PADAMPALLE**

**.....Applicant**

**VERSUS**

**THE STATE OF MAHARASHTRA AND ANOTHER**

**.....RESPONDENTS**

Mr. N. S. Ghanekar, Advocate for the applicant  
Mrs. A. S. Deshmukh, APP for the respondents/State  
Mrs. Manjusha Ware, Advocate for the victim (appointed)

**CORAM : RAJNISH R. VYAS, J.**

**DATE : 05<sup>th</sup> MARCH, 2026**

**PER COURT :**

1. This is an application for grant of bail and suspension of sentence preferred by the sole accused. The applicant was convicted in Special (POCSO) Case No. 31/2024 by the Additional Sessions Judge (Special Court), Biloli on 17-02-2025 for commission of offences under Section 354 of the Indian Penal Code (for short 'the IPC') and Section 9 (m) read with Section 10 of the Protection of Children From Sexual Offences, Act 2012 (for short 'the Act of 2012'). The sentence imposed upon him is of 5 years with fine of Rs.20,000/-.

2. The applicant was acquitted for commission of offences punishable under Sections 376 AB of the IPC and Section 4 (2) of the Act of 2012.

3. Learned advocate for the applicant submitted that if the testimony of the victim who was examined by the prosecution as PW-2, is perused it would reveal that same does not inspire confidence. He submitted that there is delay of two days, which is not explained by the prosecution in lodging the first information report. According to him, there was a civil dispute which was pending between the parties. The victim was used as a tool.

4. Per contra, Mrs. Deshmukh, learned APP submitted that the testimony of the victim who was 4 years old at the time of incident inspires confidence and though the sentence is of fixed term, considering the aim and object of the Act of 2012, sentence may not be suspended.

5. Mrs. Manjusha, learned appointed counsel for the victim has contended that there is in fact no delay in lodging the first information report and explanation is properly given. According to her, since the prestige of family was involved, the delay had occurred. She submitted that in sexual offences, the delay is not always fatal.

6. With the help of respective counsels for the parties, I have gone through the record of the case, so also, have tested their

arguments. Testimony of PW-1 shows that applicant is cousin uncle of the victim who was residing in the same locality, who resides near the victim's house. On the day of incident i.e. on 13-06-2024, at about 10.00 o'clock in the morning, PW-1 stated that her daughter was playing and as PW-1- mother could not notice her, she called the victim. She then noticed that the victim came crying from the cattle shed and accused also followed her. On being enquired from the victim, instead accused who was in frightened condition disclosed that the victim was afraid of the cow and therefore, was crying.

7. The accused then left the spot of the incident. At the relevant time, father-in-law of the PW-1 came and caught hold of the accused, so also, gave him two slaps. The accused then ran away from the spot. When PW-1 enquired from the victim, she disclosed that accused had taken her in cattle shed under pretext that her father was there. The accused then sat the victim on the wooden cot and removed victim's nicker as well as his own. She then deposed that victim had disclosed that accused has inserted his penis in her vagina and further noticed redness on the private part. This incident resulted into lodging the first information report below Exh.16.

8. So far as charge under section 376 AB of the IPC and Section 4 (2) of the Act of 2012 is concerned, the accused was acquitted. Thus, the question is only regarding applicability of section

354 of the IPC and Section 9 (m) r/w Section 10 of the Act of 2012. The victim of crime was examined by the prosecution as PW-2 with whom preliminary enquiry was made by asking the questions. The victim answered the question rationally and thereafter her statement was recorded by the court, in which, she has stated that on the day of incident, she was taken in cattle shed by the accused on the pretext that her father had called there. The accused then removed the nicker of the victim and his own and thereafter, he slept on the person of the victim. The victim then started crying and the accused left her. She has further stated that she had pain in her private part. Testimony of the aforesaid witness would clearly reveal that she was at the relevant time only three and half years old and the incident was disclosed to her mother immediately. Though the act of penetration was disbelieved by the trial court, the fact remains that there is corroboration regarding the removal of clothes by the accused of his own and the victim. The accused was the cousin uncle of the victim and therefore, trust is betrayed. The accused is also residing in the same locality, where victim is residing.

9.           Contention of the learned Advocate for the applicant that the applicant has already undergone one and half of the year of the sentence out of five years will not be a ground to suspend the sentence.

10. Since the victim who was 3 and half years, scar of the incident will remain through out her life. Testimony of this witness also inspires confidence and delay in such type of cases cannot be said to be fatal for prosecution. Since the record is already called, the appeal can be taken up for final hearing in near future.

11. In that view of the matter, I am not inclined to allow the application. Hence, the application is rejected.

12. Put up the appeal for final hearing in the first week of May, 2026.

13. Fees of appointed counsel for the victim be quantified at Rs.7,000/-.

14. Paper book is expedited.

15. R & P be sent back for preparation of paper book.

**[RAJNISH R. VYAS, J. ]**